

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

75-6133

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P/S

IN THE
United States Court of Appeals
For the Second Circuit.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

PAUL R. BROWN, UNITED STATES
TELEPHONE CO.,
Defendants-Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX.

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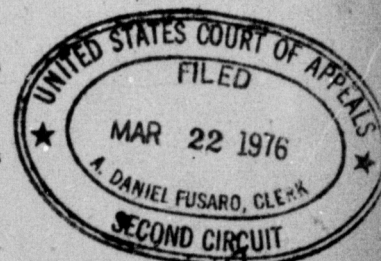
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In the
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT.

-----X
UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

PAUL R. BROWN, UNITED STATES TELEPHONE CO.,

Defendants-Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

-----X
RELEVANT DOCKET ENTRIES.

Date	Proceedings
1971	
Jul. 23	Filed complaint and issued summons.
Jul. 29	Issued Additional summons.
Aug. 30	Filed Notice of Appearance for defts. Paul R. Brown and U.S. Telephone Co.
Aug. 31	Filed stip and order that the time for defts' Paul R. Brown and U.S. Telephone Co., to answer complaint is ext. from 8-31-71 to 9-30-71. So Ordered; Wyatt, J.
Oct. 1	Filed stip and order that the time for defts' Paul R. Brown and United States Telephone Co. to answer is ext. from 9-30-71 to 11-5-71, Ryan, J.

RELEVANT DOCKET ENTRIES

- Nov. 3 Filed Notice of Appearance as co-counsel for defts. Paul R. Brown and U.S. Telephone Co.
- Nov. 5 Filed stip and order that the time for defts' Paul R. Brown and United States Telephone Co. to answer is ext. from 11-5-71 to 1-15-72. Brieant, J.
- 1972
- Jan. 17 Filed stipulation and order extending defts. Paul R. Brown and U. S. Telephone Co.'s time to answer complaint or make any motion to 2/15/72. So ordered. Weinfeld, J.
- Feb. 16 Filed stipulation and order extending defts. Paul R. Brown and U.S. Telephone Co.'s time to answer complaint or make any motion to 3/16/72. So ordered. MacMahon, J.
- Mar. 16 Filed stipulation and order extending defts. Paul R. Brown and United States Telephone Co.'s time to answer complaint or make any motion to 4/15/72. So ordered. Metzner, J.
- Apr. 18 Filed stipulation and order extending defts. Paul R. Brown and U.S. Telephone Co.'s time to file answer to complaint or make any motion to 5/15/72. So ordered. McLean, J.
- May 16 Filed Stip & Order extending time for dfts. P.R. Brown & U.S. Tele. Co., to answer to complaint to 6/14/72. So Ordered Frankel J.
- Jun. 16 Filed Stipulation and Order extending defts. Paul R. Brown and U.S. Telephone Co.'s time to file answer to complaint or make any motion to 7/14/72. So ordered. Cooper, J.
- Jul. 14 Filed stipulation and order extending defts. Paul R. Brown and U.S. Telephone Co.'s time to file answer to complaint or make any motion, to 8/14/72. So ordered. Brieant, J.
- Aug. 21 Filed stip & order that time for defts Paul R. Brown and U.S. Telephone Co. to file their answer or to make any motion be and is extended to 9-13-72 from 8-14-72. FRANKEL, J.

RELEVANT DOCKET ENTRIES

- Oct. 16 Filed Stip and Order that the time for defts Paul R. Brown and United States Telephone Co to answer is extended to 11-12-72 from 10-13-72. STEWART, J.
- Nov. 14 Filed Stip and Order that the time for the left P. Brown & U. S. Tele Co. to answer is extended to 12-13-72 from 11-13-72. STEWART, J.
- Dec. 13 Filed Stip and Order that the time for deft Paul R. Brown and U.S. Tele. Co. to answer is extended to 1-12-73 from 12-13-72. STEWART, J.

1973

- Jan. 15 Filed Stip and Order that the time for defts Paul R. Brown and U.S. Telephone Co to file an answer is extended to 2-11-73 from 1-12-73. STEWART, J.
- Feb. 5 Filed defts' Paul R. Brown and U.S. Telephones' notice of motion for withdrawal of atty, determination of atty's fee and extension of time to file answer ret. 2-15-73, by Stanley D. Josephson.
- Feb. 5 Filed defts' Paul R. Brown and U.S. Telephones' notice of motion for withdrawal of atty, determination of atty's fee and extension of time to file answer ret. 2-15-73, by Serko & Sklaroff.
- Feb. 20 Filed Stip and Order that the motion for atty to withdraw appearance, determination of atty's fee, extension of time to file answer, be adj'd to 3-2-73 from 2-15-73. STEWART, J.
- Feb. 28 Filed affdvt. of Paul R. Brown in reply to affdvts. of petitioner's application for substitution of attys.
- July 9 Filed letter re: correction on record of address of Stanley D. Josephson c/o Barry Lee Cohen, Esq. 450 Park Ave., NYC.

1974

- Apr. 9 Filed report of Mag. Hartenstine. m/n

RELEVANT DOCKET ENTRIES

- Jun. 4 Filed petitioners notice that they are withdrawing their motion to fix attys. fees as they have been d. by deft. Paul Brown and US Telephone Co. the sum of \$9,500.
- Jun. 10 Filed defts. Paul Brown & US Telephone Co. notice that they made a compromise payment to petitioner Stanley Josephson, and Mr. Josephson withdraws his motion to fix attys. fees of Jan. 23, 1972.
- Jun. 24 Filed Transcript of record of proceedings, dated 11-29, 30, 1973.
- Jul. 2 pre-trial before Pollack, J.
- Jul. 18 pre-trial before Pollack, J.
- Jul. 22 Filed defts. U.S. Telephone Co. ANSWER to complaint.
- Jul. 22 Filed defts. Paul Brown ANSWER to complaint.
- Aug. 9 Filed stip. and order that Liggio, Pitaro and Rao, Jr. are now attys. for defts. Brown (Paul R.) and the U.S. Telephone Co. in place of Serko and Sklaroff. So ordered, Stewart, J.
- 1975
- Mar. 19 Case reassigned to Judge Werker. m/n
- Mar. 26 Pre-trial Conference Held by Werker, J.
- Apr. 28 Filed pltf's affdvt. and notice of motion for partial summary judgment - ret. (at a date set by the court)
- Apr. 28 Filed pltf's memorandum in support of above motion for partial summary judgment.
- Jun. 6 Filed stip. and order as to defts Paul R. Brown and US Telephone Co. --ext. said defts time to submit papers in connection with pltf's motion for partial summary judgment to 6-17-75 -- Werker, J.
- Jun. 17 Filed deft. Paul Brown and US Telephone Co. affdt. of Paul Rao in opposition to pltf's motion for partial summary judgment.

RELEVANT DOCKET ENTRIES

- Jun. 17 Filed deft. Paul Brown and US Telephone Co. memorandum of law.
- Jun. 6 Filed government's notice to admit.
- Jul. 10 Filed pltf's reply affdvt. of V. Pamela Davis
- Jul. 15 Filed MEMORANDUM-DECISION and order #42795 that plaintiffs motion for partial summary judgment is granted. With respect to certain entries (32) this matter will be referred to a Magistrate to hear and report as to value. Submit a partial summary judgment order in accordance with this opinion. So ordered. -- Werker, J. m/n
- Aug. 12 Filed pltf's trial memorandum of law.
- Aug. 13 Trial begun and concluded before Werker, J. - Decision Reserved. (Briefs to be submitted - 9-19-75 & reply - one week.)
- Aug. 12 Filed govts. affdt. of V. Pamela Davis.
- Aug. 12 Filed PARTIAL JUDGMENT--IT IS ADJUDGED AND DECREED that pltf. have judgment against Paul R. Brown, etc. as indicated. So ordered, Werker, J. m/n Judgment entered, clerk
- Sept. 10 Filed Transcript of record of proceedings, dated Aug. 13, 1975
- Sept. 22 Filed plaintiff's post trial memorandum of law.
- Oct. 7 Filed post trial memorandum of defts. Brown and US Telephone Co.
- Oct. 7 Filed OPINION #43209..The defendants have failed to sustain the defense of the statute of limitations. The court is persuaded that the plaintiff has sustained its burden of proof and has shown a fair preponderance of the evidence that the defense has viol. sections 1482(b) and 1592 of Title 19. The Government is granted judgment against Paul R. Brown and the U.S. Telephone Company in the amount of \$1,522,454.50. Defendants affirmative defenses are dismissed for reasons stated in my memorandum of July 11, 1975. So ordered.--Werker, J. m/n

RELEVANT DOCKET ENTRIES

- Oct. 7 Filed stip. and order of summaries of examination and appraisal, etc. -- Werker, J.
- Oct. 23 Filed JUDGMENT AND ORDER #75,845 that the USA shall have judgment against defendants in the sum of \$1,522,454.50 plus interest to date and that the complaint is dismissed as to the remaining defendants with prejudice and without costs. -- Werker, J. Judgment entered, Clerk. m/n
- Dec. 19 Filed by defendants Paul R. Brown and U.S. Telephone Co., notice of appeal to the USCA for the 2nd Circuit from final judgment entered on 10-24-75 - copy mailed to US Attorneys Office.
- 1976
- 6 Filed order substituting attorney for Paul R. Brown & US Telephone Co. Werker, J.
- Jan. 16 Filed stipulation designating exhibits for the appeal.

TRANSCRIPT.

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X
4 UNITED STATES OF AMERICA, :
5 vs. Plaintiff : 71 Civ. 3294
6 PAUL R. BROWN, :
7 Defendant. :
8 -----X

9
10 BEFORE: HON. HENRY F. WERKER,

District Judge

11
12 August 13, 1975
13 10:00 a. m.
14

15 APPEARANCES:

16 FOR THE PLAINTIFF:

17 PAUL J. CURRAN, UNITED STATES ATTORNEY

18 BY: Pamela Davis, Assistant United States Attorney
Fredrick P. Schaeffer, Assistant U. S. Attorney

19 FOR THE DEFENDANT:

20 LIGGIO, PITARO & RAO, JR., ESQS.

21 BY: Paul R. Rao, Jr., Esq.
22
23
24
25

(Case called.)

MISS DAVIS: The plaintiff is ready.

MR. RAO: The defendant is ready.

THE COURT: You may proceed.

MISS DAVIS: Good morning. My name is Pamela Davis. I am an Assistant United States Attorney. With me is Fredrick Schaeffer, also an Assistant U. S. Attorney and Fred Sneider, who is a student at N. Y. U., who is serving with our office this summer.

At the beginning, your Honor, I have a number of exhibits to introduce pursuant to the stipulation which it is my understanding that your Honor has signed.

THE COURT: I have.

MISS DAVIS: If you have a signed copy, I would like to introduce that first as Joint Exhibit 1.

(Joint Exhibit 1 for identification received in evidence.)

MISS DAVIS: Your Honor, pursuant to paragraphs 1 and 2 of that stipulation, which provide for the admissibility of Government's Exhibits 1 through 50-- and the relevance of the documents is apparent from their face-- I offer Government's Exhibits 1 through 50, which you have, in evidence.

THE COURT: Governments, Exhibits 1 through 50 for identification received in evidence.

MISS DAVIS: Pursuant to the same paragraphs of the stipulation, paragraphs 1 and 2, I will offer Government's Exhibits 1-B through 49-B inclusive in evidence.

Pursuant to paragraphs 7 and 9 of the stipulation, I offer Government's Exhibits 1-A through 50-A inclusive into evidence.

(Government's Exhibits 1-B through 49-B and 1-A through 50-A for identification received in evidence.)

MISS DAVIS: Pursuant to paragraphs 3, 4 and 5 of the stipulation, I offer Government's Exhibits 56 through 69 inclusive into evidence.

(Government's Exhibits 56 through 69 for identification received in evidence.)

MISS DAVIS: Pursuant to paragraph 8 of the stipulation, I offer Government's Exhibits 39-C, 40-C and 45-C in evidence.

(Government's Exhibits 39-, 40- and 45-C for identification received in evidence.)

MIS DAVIS: For your Honor's convenience, I have a list of Government's Exhibits 1 through 50 which are the subject of a prior partial summary judgment.

The government calls Harry Haroian

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Haroian-direct

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2 HARRY HAROIAN, called as a witness by the
3 government, being first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MISS DAVIS:

6 Q Mr. Haroian, by whom are you employed?

7 A U. S. Customs.

8 Q How long have you worked for the U. S. Customs
9 Service?

10 A Approximately 25 years.

11 Q What positions have you held with the Customs
12 Service?13 A I have been a clerk, an Inspector, an Entry
14 Officer, a Liquidator, an Examiner and a Supervisory
15 Import Specialist.

16 Q What is your present position?

17 A Supervisory Import Specialist.

18 Q Could you tell us, please, the responsibilities
19 of the Supervisory Import Specialist?20 A I am in charge of approximately 11 teams
21 consisting of 4 members per team, and we deal primarily
22 in electric and electronic components imported into the
23 United States.24 Q How long have you been a Supervisory Import
25 Specialist or Import Specialist?

enb

Haroian-direct

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1
2 A I have been an Import Specialist since 1968
3 and a Supervisory Import Specialist since March of this
4 year.

5 Q During that time what kind of merchandise have
6 you worked with?

7 A Electrical and electronic components, including
8 telephones.

9 Q Do you have any particular qualifications for
10 this position, that of Supervisory Import Specialist?

11 A I have attended schools in which proficiency
12 examinations must have been met and passed and also within
13 Customs itself we have a promotional program in which
14 intensive courses are given.

15 I also teach at New York Trade School, the
16 City University of New York: electricity, motors, refriger-
17 tion..

18 Q In order to obtain the position, Mr. Haroian,
19 did you have to take a competitive examination?

20 A Yes.

21 Q Do you have, in your position, any direct
22 responsibility for the routine importation processes?

23 A Yes, I do.

24 Q Could you give us a brief explanation of
25 the routine process of importation?

1 emb

Haroian-direct

6

2 A At the time of entry, an entry package is
3 presented to Customs for entry purposes and this consists
4 of an invoice, a summary of invoices, a 7512 form as it
5 is called in Customs and, where necessary, a Special Customs
6 Invoice which is required on invoices which are in
7 excess of \$500.

8 Q I show you Government's Exhibits 1-B through
9 49-B in evidence, Mr. Haroian, and I ask you if you can
10 identify those for us, please?

11 A These are Special Customs Invoices.

12 Q Does Customs routinely place any markers
13 on those documents?

14 A Yes, we do.

15 Q Describe that marking, please.

16 A With a stamping machine we put a numerical
17 indication of a sequence of numbers on the documents.

18 Q In other words, you stamp a number on it, is
19 that correct?

20 A Yes.

21 Q Does that number appear on Government's
22 Exhibits 1-B through 49-B?

23 A In most instances, yes.

24 Q I am now going to show you, Mr. Haroian,
25 Government's Exhibits 1 through 50. Do you recognize

emb

Haroian-direct

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Government's Exhibits 1-B through 50-B?

A Yes.

Q What are they?

A Commercial invoices and some packaging speculations.

Q Do you recognize the invoices as belonging to any particular series of transactions?

A Yes. They were transactions with the United States Customs.

Q And what is the merchandise involved in those and who is the importer?

A Telephone apparatus for the U. S. Telephone.

Q Are they the telephones that are involved in this litigation?

A Yes.

Q Does the stamp appear on Government's Exhibits 1 through 50?

A In most instances, yes.

Q Have you, Mr. Haroian, had an opportunity to examine those Government Exhibits 1 through 50 and 1-B through 50-B?

A Yes, I have.

Q Can you tell us whether there are any similarities or dissimilarities between and among the two sets

emb

Haroian-direct

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of documents?

A They are similar.

Q As to what kind of information are they similar?

A They have the same model numbers, the same quantities, the same values, the same dates of shipment, the same ship, the same port of embarkation, and the same consigned port of New York.

Q I show you, Mr. Haroian, Government's Exhibits 1-A through 50-A. Can you tell us if you recognize those documents, please?

A These are also commercial invoices.

Q Do they bear the Customs stamp?

A They do not.

Q What transactions do those invoices describe?

A The transactions are similar to Governemnt's Exhibit 1.

Q What merchandise is involved in those invoices?

A They also contain telephones.

Q Do you have any personal knowledge as to whether or not Government's Exhibits 1-A through 50-A were ever submitted to the U. S. Customs Service?

A They were not.

Q Have you examined Government's Exhibits 1-A through 50-A as part of your responsibilities with the

emb

Haroian-direct

9

U. S. Customs Service?

A Yes, I have.

Q Can you tell us whether they are similar or dissimilar to Government's Exhibits 1 through 50?

A They are similar.

Q Are there any differences between the two sets?

A They are similar in all aspects except for the unit values.

Q Could you list some of the ways in which they are similar for the record?

A The quantities are identical. The descriptions of the items are identical. The dates of shipment, the ship on which they were shipped, and also the Letter of Credit numbers are identical in both invoices.

Q During the period 1964 to 1971, Mr. Haroian, approximately how many of the routine importation processes that you described, the package of documents that goes through Customs, how many of those transactions occurred per day, approximately?

A 2000.

Q And during that period, approximately how many import specialists were there to deal with those transactions?

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Haroian-direct

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2 A 20.

3 Q Did there come a time, Mr. Haroian, when you
4 were asked, in your capacity as an Import Specialist, to
5 be responsible for the evaluation of the merchandise that
6 was involved in this trial?

7 A Yes, there was.

8 Q What sort of an evaluation were you asked to
9 make?

10 A An appraisement under Section 592.

11 Q And what would that be?

12 A Domestic value.

13 Q Could you explain to us what you mean by the
14 domestic value of the merchandise?

15 A The price at which it was freely offered and
16 sold in the market, in the usual quantities here in the
17 United States.

18 Q Does this evaluation differ from other sorts
19 of evaluations which you also made--

20 A Yes.

21 Q --in your responsibilities?

22 A Yes.

23 Q Returning to your duties as an Appraiser,
24 a Liquidator, upon what did you base this appraisal that
25 you made of the domestic evaluation of the merchandise?

1 A The best information available at the time.

2 Q And what was that?

3 A The price list submitted by Paul Brown.

4 Q Now, I show you Government's Exhibits for
5 identification 51 through 55 and ask you if you recognize
6 that?
7

8 A Yes, I do.

9 Q Could you tell us what they are, please?

10 A They are price lists on the U. S. Telephone
11 Company.

12 MISS DAVIS: Pursuant to paragraph 10 of Joint
13 Exhibit 1, I offer Government's Exhibits 51 through 55
14 in evidence.

15 MR. RAO: Your Honor, I am going to object
16 to this going into evidence for this reason: these are
17 projected price lists. They do not per se show domestic
18 values. What a company issues on a Friday isn't what
19 they are selling it for on the next Monday, so if this is
20 being introduced for the purpose of showing domestic
21 value per se, I object.

22 MISS DAVIS: Your Honor, Mr. Rao has already
23 waived every objection except relevance. I think they
24 are clearly relevant since they were what he used as the
25 basis of evaluation. I think Mr. Rao is talking about the

emb

Harcian-direct

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weight of the evidence. He wants to cross-examine on the basis of it, if he wants to test it in other ways, fine.

MR. RAO: We discussed relevance and we understood relevance also meant competency and materiality.

MISS DAVIS: No.

MR. RAO: When I spoke to you on the phone, when I stipulated as to relevance, I am also using the words materiality and competency. I object to it as being incompetent, not probative, and immaterial.

THE COURT: It is material for the simple reason that he used it. And I receive it.

MR. RAO: Fine, your Honor.

(Government's Exhibits 51 through 55 received in evidence.)

BY MISS DAVIS:

Q I believe I asked you before, the source of those price lists.

A Mr. Paul Brown.

Q Can you explain to his Honor, please, how you used those price lists in determining the value of the merchandise?

A The price lists were for particular periods of time, and were identifications of the invoiced values. And the price list indicated to me that there were sales

emb

Haroian-direct

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at these particular prices or offers for sales at these particular prices during that period. I used the wholesale price to arrive at my domestic value.

Q Mr. Haroian, I am now going to turn your attention to Government's Exhibits 70 to 74. Do you recognize those exhibits, Mr. Haroian?

A Yes, I do.

Q Can you tell us what they are, please?

A It is a representation of the invoices.

Q The first column on each of these parts, Mr. Haroian, is obviously a Government's Exhibit number, and second, the Entry Date. The third column, can you explain to us, please, what that information is and the source of the information?

A That's the entry number which is placed on by Customs by a numbering machine identifying the item.

Q And what was the source of those entry numbers? On which of the documents do these entry numbers appear?

A Those were the documents which were presented for Customs.

Q Government's Exhibits 1-B through 49-B and 1 through 50; is that correct?

A That is correct.

Q Now, the third column, the "Letter of Credit

1 emb

Haroian-direct

2 Number and Bank"--can you tell us what that information is
3 and where it came from?

4 A Yes. That was indicated on the commercial
5 invoices.

6 Q On which sets of invoices, Mr. Haroian?

7 A On the commercial invoices; both sets of
8 commercial invoices.

9 Q That would be both 1 through 50 and 1-A
10 through 50-A.

11 A That is correct.

12 Q Was the information the same or different on
13 the two sets of invoices?

14 A That particular information was the same.
15 The Letter of Credit number was the same.

16 Q Now, the fourth column, "Model and No. of Units,"
17 what does that refer to and what was the source of that
18 information?

19 A That also was obtained from the commercial
20 invoices and it identified the model number and number
21 of units.

22 Q Was this the same or different on the two
23 sets of invoices?

24 A It was the same on both sets of invoices.

25 Q Both 1 through 50 and 1-A through 50-A.

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Haroian-direct

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1
2 A That is correct.

3 Q Turning to the columns in red, the fifth
4 column and the sixth column, would you tell us what those
5 columns represented?

6 A Yes. Those were the unit values and the
7 First Invoice Unit Value was the price which was on the
8 invoice which was submitted to Customs.

9 Q That would be 1 through 50, is that correct?

10 A That would be 1 through 50, that is correct.

11 Q And the second column?

12 A That was on the second invoice.

13 Q That was the price which was indicated on the
14 second invoice which we obtained--

15 MR. RAO: Will you speak a little louder?

16 THE COURT: Will you speak up a little bit?

17 MR. RAO: Because the stenographer is directly
18 in his line and I just can't hear him.

19 Q Would you repeat again, please, the information
20 in column six, where it came from and what it is?

21 A The Second Invoice Price?

22 Q Yes.

23 A That was obtained from the second invoice
24 that we obtained.

25 Q And that would be the invoices 1-A through 50-A.

1 emb

Harolian-direct

2 A That would be from invoices 1-A to 50-A.

3 Q Now, as to the second column entitled "Entry
4 Number," third, fourth and fifth and sixth columns, have you
5 had an opportunity to inspect the chart to check whether
6 or not the columns accurately reflect the information on
7 the face of the documents?

8 A Yes, I have.

9 Q And to they?

10 A Yes, they do.

11 Q Turning your attention for the moment--

12 MISS DAVIS: And here I can put--for your
13 Honor's convenience, I have a summary of the information
14 on these charts.

15 Q Now turning to Exhibits 7 to 27, the first
16 three charts. Can you tell us what this seventh column
17 represents?

18 A Yes.

19 Q And where that information came from?

20 A That was the price that I obtained from the
21 price list that was submitted by Mr. Brown.

22 Q In other words, the seventh column on these
23 first three charts represents your expert opinion as the
24 domestic value?

25 A That is correct.

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Haroian-direct

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2 Q Now, you testified before, Mr. Haroian, that
3 you obtained the domestic evaluation by checking the model
4 number and time against the price list, is that correct?

5 A That is correct.

6 Q Are there any entries represented on these
7 three charts which were treated differently?

8 A Yes, there were.

9 Q I draw your attention to items number 31 and
10 32. Would you tell us if any of the entries on 31 and 32
11 were treated differently?

12 THE COURT: Can you see it?

13 THE WITNESS: Bring it up a little, please.

14 A Yes. During that period, I didn't have a
15 wholesale price list, or the price was not indicated for
16 the Electra Gold, and Ivory on the price list, and in
17 the absence of a price list or something substantial, I
18 utilized the second invoice prices representing the
19 domestic value.

20 Q And turning to items 7, 11 and 15, can you
21 explain in what fashion you may have treated items in
22 those categories differently?

23 A We didn't have a specific designation for the
24 Antimony, and I utilized a similar item, which was the
25 Duchess, and I appraised the Antimony as being similar to

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Haroian-direct

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the 'Duchess' and utilized that value.

Q Have you had an opportunity to examine the entries on column seven on Government's Exhibits for identification 70, 71 and 72 and check it against the accuracy of its reflection of your domestic evaluations of the merchandise?

A Yes, I have.

Q Is it accurate?

A Yes, it is.

Q Now, turning your attention for the moment to Government's Exhibits 73 and 74 for identification, can you tell us what merchandise they represent?

A Yes. That was the Model JO-4 Telephone Apparatus.

Q JO-4, is that known by any other set of initials?

A US-4.

Q And can you tell us, please, what the last column entitled "Total Second Invoice Value" represents?

A That was the price which was on the second invoice.

Q And can you tell us, please, what method you followed in coming to the domestic evaluation in that last column for this merchandise, the US-4 merchandise?

A In the absence of a price list or any substantial documentation on what the freely-offered price

1 emb Haroian-direct 19

2 would have been for this merchandise, once again I used
3 the second invoice prices indicating the domestic value.

4 Q You testified before that you had an opportunity
5 to check and make certain the entry number, your second
6 invoice price was accurate. Now, as to the last column
7 on these two charts, "Total Second Invoice Value," have you
8 had an opportunity to check to see whether or not that
9 column accurately reflects your domestic evaluation of
10 the merchandise?

11 A Yes.

12 Q Does it?

13 A Yes.

14 MISS DAVIS: Your Honor, I offer the information
15 from the Entry Number, the total domestic value, into evi-
16 dence.

17 MR. RAO: At this time I am going to object,
18 your Honor-- up until the column that starts to read from
19 "U.S. Wholesale Price to Total Domestic Value"--I have no
20 objection to entering "Entry No.," "Letter of Credit," "Model
21 and No. of Units" and "First Invoice Price Unit" but I
22 object to the rest of it.

23 THE COURT: What is your objection?

24 MR. RAO: On cross-examination I will show it
25 to your Honor.

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Haroian-direct

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2 MISS DAVIS: I don't understand the basis
3 of his objection.

4 MR. RAO: I would like to establish the
5 relevance of his determination that the U.S. wholesale
6 price is the price that he should have charged these
7 importations with.

8 And secondly, how then he arrived at the total
9 domestic value based upon that.

10 I will attempt to show--if your Honor will let
11 me question him preliminarily--

12 THE COURT: No. Save it for cross-examination.
13 I will accept it into evidence.

14 (Government's Exhibits 70, 71, 72, 73 and 74
15 for identification received in evidence.)

16 BY MISS DAVIS:

17 Q One last question, Mr. Haroian, on the charts.
18 The eighth column entitled "Total Domestic Value" on charts
19 70 through 72, can you tell us how that was arrived at?

20 A Yes. That was the total units multiplied by
21 the U.S. Wholesale value for each model and it extended
22 out, and the sum total value, the units plus the value,
23 came to the total domestic value.

24 Q In other words, it was a simple multiplication
25 of the unit numbers in column 4 times the value in column 7,

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Haroian-direct

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1
2 is that correct?

3 A That is correct.

4 Q Have you had a chance to check the accuracy of
5 the information in Column A?

6 A Yes, I have.

7 Q And is it accurate?

8 A Yes, it is.

9 Q Mr. Haroian, I show you Government's Exhibits
10 in evidence 39-C, 40-C and 45-C and I ask you if you can
11 recognize the form, not the information on there but
12 just the form, on which that information is printed?

13 A Yes, I do.

14 Q What form is that?

15 A This is a Special Customs Invoice.

16 Q Does the marking which Customs places on Special
17 Customs Invoices appear on those invoices?

18 A No.

19 Q Do you have any personal knowledge as to
20 whether or not those invoices were ever submitted to
21 Customs?

22 A They weren't.

23 Q Have you had an opportunity to compare
24 Government's Exhibits 39-C, 40-C and 45-C with Government's
25 Exhibits 39, 40 and 45?

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Haroian-direct/cross

22

2 A Yes, I have.

3 Q Can you tell us how they are similar or dis-
4 similar in terms of the information they contain?5 A They are similar insofar as all the information
6 is concerned including unit numbers, and model descriptions,
7 and variations in value and extensions thereof.

8 Q And which set contains the higher value?

9 A The C Exhibit.

10 MISS DAVIS: The government has no further
11 questions.12 MR. RAO: Your Honor, could I just have about
13 five minutes? I want to discuss something.

14 THE COURT: You want a short recess?

15 MR. RAO: Yes, sir.

16 THE COURT: All right, there will be a short
17 recess. Step down.

18 (Recess.)

19 HARRY HAROIAN, resumed.

20

21 CROSS-EXAMINATION

22 BY MR. RAO.

23 Q Mr. Haroian, I refer you to Government's
24 Exhibits here, and so we understand one another, I would
25 like you to explain the following: the first column which

1 emb

Harroian-cross

23

2 is your "Entry Date," is merchandise that entered the country,
3 correct?

4 A Excuse me?

5 Q What is the first column? What does that
6 represent?

7 A That's the second column. The Government's
8 Exhibits are in the first column.

9 Q I am talking about the "Entry Date"; what does
10 that represent to you?

11 A That's supposed to represent the date of entry.

12 Q That's what I said. So it represents that.
13 This is the entry number given, is that correct?

14 A That is correct.

15 Q Now, I refer to the third column.

16 A Yes.

17 Q As to the fourth column, this is the corresponding
18 Letter of Credit that relates to the importation of the
19 merchandise into the country, correct?

20 A That is correct.

21 Q The fifth column is the description of the
22 name of the telephone, per se, correct?

23 A (No response.)

24 Q All right. Now, the sixth column is the price
25 on the invoice submitted to Customs, correct?

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Haroian-cross

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A That is correct.

Q The seventh column is the price on the bank document submitted to or submitted in conjunction with the Letter of Credit, correct?

A It was just the second invoice. I don't know whether it was a bank document.

Q It was the second invoice. You stated that the first invoice was marked by Customs. Was this invoice marked by Customs, referring to this column here?

A No.

Q It was sent to a bank for purposes of a Letter of Credit, correct?

A I don't know what purpose it was.

Q You don't know what that invoice was used for?

A I am not certain.

Q When you obtained this invoice, from whom did you obtain it?

A Our agency.

Q Where did they obtain it from, to your knowledge?

A From the bank, probably. I have no direct knowledge of that.

Q Mr. Haroian, have you been familiar with the

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Harolan-cross

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1
2 United States Telephone and Brown case for upwards of
3 six years?

4 A Yes.

5 Q Would you say, based upon your knowledge of
6 the United States Telephone and Brown case, that this
7 invoice was the invoice submitted for the purpose of
8 the Letter of Credit based upon your six-year knowledge
9 of this case?

10 MISS DAVIS: Your Honor, we have already
11 stipulated in the stipulation that they were submitted
12 to the bank for the purpose of a Letter of Credit. This
13 witness doesn't seem to know.

14 MR. RAO: If your Honor please, I would
15 like to know how, after six years, where he testified in
16 two trials, he doesn't know this.

17 THE COURT: I guess not. He doesn't know it
18 of his own knowledge but he didn't obtain the invoice.
19 The question has been asked and answered. If you want
20 the stipulation on the record--

21 MISS DAVIS: Your Honor, we have already
22 stipulated. It is a stipulated fact that those invoices
23 were submitted to the banks in conjunction with the Letter
24 of Credit.
25

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Haroian-cross

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BY MR. RAO:

Q Let's get to the wholesale price. I show you Government's Exhibit 51--

MISS DAVIS: Each is separately marked, Mr. Rao.

Q (Continued)--and Mr. Haroian, you stated that based upon this exhibit, you determined the United States Wholesale price, am I correct?

A That is correct.

Q And this exhibit, Exhibit 51, what is it, sir?

A This is a price list.

Q What?

A This is a price list.

Q From whom to whom?

A This is an offering by U.S. Telephone Company.

Q To?

A To wholesalers.

Q You mean--isn't U. S. Telephone Company selling this then? Well, I withdraw the question.

In order for you to determine that you should go to the U. S. Wholesale price you had not accepted as the true price the export price in the invoice submitted to Customs for the entry, correct?

MISS DAVIS: Your Honor, I object to that

1 question. There has been no testimony whatsoever about
2 any valuation other than domestic valuation. I don't know
3 what Mr. Rao is referring to.
4

5 MR. RAO: All right, then I will explain it.

6 Q Relative to valuation, when you determine the
7 value of an item, what are the steps you initially go through
8 under the Tariff Act to determine how an item should
9 valued?

10 A In this particular instance, Section 592--

11 Q In an instance when merchandise--if an importer
12 is bringing in merchandise from a foreign country, he
13 submits his invoice to Customs, and the value must then
14 be determined in order to assess duty; correct?

15 A That is correct.

16 Q What do you do in order to determine value so
17 that duty may be assessed?

18 A We have to appraise it under the sections of the
19 law which are applicable and that is known as Section 402
20 and Section 402-A. One is the final list and the other is
21 a modification of that.

22 Q So initially you have in front of you the
23 export value--the import price and value, what is costs,
24 correct? Either you accept that or reject that; is that
25 correct?

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A That's true.

Q In this particular case you have rejected that price, correct?

MISS DAVIS: I object, your Honor. There has been no testimony whatsoever that valuations for the purpose of determining what Customs duty must be paid is at all relevant. This is an entirely different case with an entirely different standard of valuation for a completely different purpose.

MR. RAO: If your Honor please, since the issue is value, I think the court would want to know what is value in this case, and in order for us to determine value in this case, I would think that an expert like Mr. Haroian should inform the court how he determined that he should determine the value based on wholesale prices. I would like to know how he determined this.

THE COURT: If you asked him that question I would let him answer it.

Q How did you determine, sir, that value should be based on wholesale selling prices?

A I judged that to be the domestic value under Section 592.

Q And how did you form that judgment under that section?

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2
3 MISS DAVIS: Your Honor, now he is asking
4 this witness a legal question.

5 THE COURT: No, he's not.

6 Q How did you form your judgment, sir, in order
7 to have this chart made up? How did you form your judgment?

8 A On the best information available to me.

9 Q Based upon the information that you were
10 supplied, you formed a judgment to determine that value
11 should be the wholesale selling price; correct?

12 A Under this statute.

13 Q I am asking you, sir, what premises did you
14 use in order to form the conclusion that the wholesale
15 price should be the price? What were your mental premises
16 based upon the information given to you as you applied it
17 to the statutes?

18 A That the first invoice price didn't properly
19 reflect the true transaction.

20 Q Right. So that the export price didn't reflect
21 the true transaction.

22 All right, now--

23 MISS DAVIS: Excuse me, your Honor. There
24 has been no testimony that the export price--

25 MR. RAO: He just said that.

MISS DAVIS: Would you read that back, please?

1 emb

Harolian-cross

29

2 And your question, I object to your equation
3 of export value with first invoice price. He testified
4 that the first invoice price was unacceptable but I don't
5 believe he testified that that is the equivalent of the
6 export price.

7 BY MR. RAO:

8 Q What was the first invoice price?

9 A That was the price at Customs.

10 Q Is that the export value? Is that what you
11 call that?

12 A It doesn't have to be export value.

13 Q What is it then?

14 A It can represent an infinite number of values
15 under the basis of the appraisal. It is predicated on
16 the basis of the appraisal.

17 Q On the invoice price that is placed on the
18 Customs invoice submitted to Customs, what is that called?

19 A It is an invoice value. It has nothing to do
20 with appraisal.

21 Q It is an invoice value based upon what? It
22 is a price. We were talking about prices. It is a price
23 based upon what?

24 A The transaction.

25 Q What transaction?

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Haroian-cross

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A Between the importer and the manufacturer.

3

Q And that transaction is what?

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A (No response.)

5

Q Relates to what?

6

A (No response.)

7

Q The exportation of the merchandise. Is that

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correct?

9

A It should reflect the value of the exportation.

10

Q Now, how many years have you been with Customs,

11

sir?

12

A Approximately 25 years.

13

Q And you say you teach?

14

A Yes, I do.

15

Q Based upon your 25 years of experience, is it

16

your testimony that a wholesale selling price list

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accurately reflects the prices for which these items were

18

in fact sold?

19

A It is the best indication of the price at which it is sold in the United States lacking any other

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information.

21

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Q That's the best information?

23

A Yes.

24

Q Would the best information be, sir, to go to

25

the individual to whom the merchandise was sold, to

1 emb

Haroian-cross

31

2 wit, to obtain the invoice from Brown, to the person who
3 purchased from the United States Telephone Company? Isn't
4 that better information? Isn't that better information,
5 sir.

6 A It was tried to be obtained, to the best of
7 my knowledge, by the Special Agent and no information was
8 given.

9 Q What Special Agent are we talking about?

10 A Special Agent Ripa.

11 Q Is it your testimony that Agent Ripa never
12 obtained from Mr. Brown at any time any invoices to the
13 persons to whom he actually sold this merchandise? Is
14 that your testimony, sir?

15 A To the best of my knowledge, that is true.

16 Q And Customs doesn't take on the responsibility
17 of finding out whether or not this merchandise was in fact
18 sold in the United States? Is Customs concerned with that?

19 A Yes, we are.

20 Q And although Customs is concerned with that,
21 Mr. Ripa didn't determine whether or not there were any
22 sales by Mr. Brown to any purchasers; is that correct?

23 A To the best of my knowledge.

24 Q Did you ever inquire from Mr. Brown whether
25 or not Mr. Brown sold any of these telephones here in the

1 emb

Haroian-cross

32

2 Government's Exhibits upon which you predicated the whole-
3 sale price. Did you ever inquire from Mr. Brown whether
4 he sold these items for less than this wholesale price,
5 sir?

6 A We have sent out notices to Mr. Brown, while
7 I was the Examining Officer in that office, dealing with
8 these telephones and no responses were received.

9 Q And these were the years from--

10 A 1968 on.

11 Q So you are saying from 1968 through--because
12 you said on--through 1975 the United States Customs has
13 no information that Mr. Brown ever sold any of these
14 telephones, from 1964 back, for less than the wholesale
15 price. Is that your testimony?

16 A I am covering the period from 1964 to the end
17 of this exhibit.

18 Q 1968, sir, is that your testimony, Mr. Haroian?

19 A Up to 1973, when I was the examiner in there,
20 there was no information from Mr. Brown.

21 Q Did you help Miss Davis to construct these
22 charts?

23 A Yes.

24 Q Prior to your helping Miss Davis to construct
25 those charts, have you spoken to anybody in Customs

1 emb

Haroian-cross

33

2 subsequent to the time you mentioned, 1973, to determine
3 whether or not this wholesale price would in fact be the
4 accurate reflection of what it was sold for? Have you?

5 A No, I haven't.

6 Q So you have discussed this with no one since
7 1973, and yet you made up this chart representing that
8 the price should be the wholesale price, is that correct?

9 A That is correct.

10 Q Did you discuss this with Mr. Josephson of the
11 United States Customs? Have you discussed it with him,
12 sir?

13 A Not this particular period, no.

14 MISS DAVIS: Excuse me. Could we have the
15 date, a time frame for that question?

16 Q Have you ever discussed this with Mr. Josephson
17 of the United States Customs, sir?

18 A Within the last week or so.

19 Q What did you discuss with Mr. Josephson?

20 A Nothing. In reality, just the U. S. wholesale
21 price.

22 Q Did Mr. Josephson inform you that the appraisement
23 on Mr. Brown's merchandise, that Customs initially assessed,
24 had been withdrawn and that it was being cut down close
25 to 75%? Did he tell you that?

1
2 A I am not aware of that. He didn't tell me
3 that.

4 Q Did Mr. Josephson tell you that he, himself,
5 inquired directly of retailers to determine the true value?
6 Did he tell you that, sir?

7 MISS DAVIS: Again, can we have some times on
8 these discussions?

9 MR. RAO: Any time prior to the time that he
10 testified in this courtroom, that he is testifying here.

11 Q Did Mr. Josephson tell you this?

12 A No, sir.

13 Q No, sir?

14 A No, sir.

15 Q Let's get to domestic value. Explain that to
16 me, would you, sir, please?

17 A The domestic value is the extension of the
18 U. S. wholesale price in this price list and if I may
19 elaborate on the price list--

20 Q You may, but explain that to me first, all
21 right, sir, so I understand it.

22 What is your domestic value, please, if you
23 take the number of units, like the example number 12,
24 Government's Exhibit 12, Continental Ivory, 1348 units,
25 multiply it by 35.50 and you come to this figure only if

1
2 you add all the items within the unit? Presupposing
3 for the sake of the argument that the only item here was
4 this and this, you would come up with that?

5 A That is correct.

6 MISS DAVIS: Mr. Rao--

7 MR. RAO: I know they can't understand that.

8 Q Presupposing that the only item was the name
9 of the telephone, the price submitted on the invoice on
10 the Letter of Credit, multiplied by the wholesale price,
11 you would then come up with your figure?

12 A That is correct.

13 Q Okay. So that therefore, sir, this wholesale
14 price figure was most significant, isn't it?

15 A It is.

16 Q Sure it is. You have no knowledge, do you,
17 sir, that if any items here, any items here, that in fact,
18 if any items in the Government's Exhibits, that in fact
19 a given telephone was sold for less than your United States
20 wholesale price? You have no such knowledge, do you, sir?

21 A No, I do not.

22 Q Nor, in fact have you been informed of this
23 by anyone in Customs prior to your assisting Miss Davis
24 in making up these charts?

25 A That is correct.

Q Now, sir, for the purpose of evaluation, or valuation, could you have determined, sir, in this chart here, this figure here, under, granted, the proper set of circumstances, that the cost of production of that item should be the price of that item?

A Not under Section 592.

Q Why not?

A Because that indicates that the appraisement should be done at domestic value.

Q Why?

A Because it must be the price at which it is sold in the principle market here in the United States.

Q And you can't apply the cost of the production because why, sir?

A All the elements would be missing from the particular item.

Q What elements?

A Transportation, profit, commissions, any items which are incorporated in the unit.

Q Would be missing from--

A The domestic value.

Q Yes. So you go to domestic value rather than cost of production for that reason, correct?

A Under Section 592 it says "domestic value."

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Haroian-cross

37

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2 Q And I ask you again, because you have to be a
3 little patient with me and clarify it for me, why, then,
4 did you go to domestic value?

5 MISS DAVIS: Your Honor, the question has
6 been asked and answered a dozen times and he goes to it
7 because that's what it says in the statute.

8 MR. RAO: All right, I withdraw the question,
9 Miss Davis.

10 Q Mr. Haroian, when you picked up this wholesale
11 selling price list of Paul Brown's, Government's Exhibit
12 51, did you ever see any other wholesale price list from
13 the United States Telephone Company?

14 A The predications of my appraisement are based
15 on these five.

16 Q Government's Exhibit 51.

17 MISS DAVIS: 51 through 55, Mr. Rao. They
18 are sequentially numbered.

19 Q Is that correct?

20 A That is correct, sir.

21 Q Have you ever seen any other wholesale price
22 lists from United States Telephone Company?

23 A I have seen the five over here.

24 Q Have you ever seen any others, sir?

25 A I have not.

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Haroian-cross

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1 Q Have you requested any?

2 A Probably have.

3 Q During this time period?

4 MISS DAVIS: What time period?

5 MR. RAO: To wit, the time period within
6 Government's Exhibits, these charts, 64 through 68, I
7 think.

8 A I am sure they have been asked for.

9 Q Prior to your making up these charts together
10 with Miss Davis, did you inquire from the United States
11 Telephone Company whether they had any other?

12 A The Special Agent who was on the case was
13 trying to obtain them. He had not obtained them. These
14 are all the information that we have.

15 Q Who was that Special Agent?

16 A Mr. Ripa.

17 Q When was the last time Mr. Ripa was on this
18 case?

19 A That was in 1969.

20 Q Yes. I am talking about 1975, sir.

21 A I have no knowledge of what happened in 1975.
22 I am no longer in that line.

23 Q I know, sir, but I am asking you, before you
24 assisted Miss Davis in putting down the wholesale price
25

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Haroian-cross

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2 list and using this as a guide, did you inquire from the
3 United States Telephone Company whether there were any
4 other wholesale price lists during the periods involved
5 within these charts?

6 A No, we didn't.

7 Q Mr. Haroian, is this your terminology, "Second
8 Invoice"? Is that your terminology?

9 A (No response.)

10 Q And I refer to the fact of the seventh column.
11 Is that your terminology?

12 A (No response.)

13 Q On top of the seventh column, is that your
14 terminology, "Second Invoice"?

15 A No.

16 Q Now, Mr. Haroian, when did you prepare this
17 chart? When?

18 MISS DAVIS: The chart, Mr. Rao, or the
19 information on the chart?

20 MR. RAO: Well, I think we don't prepare a
21 chart because the manufacturer prepared it, Miss Davis. I
22 am referring to the information on the chart, obviously.

23 Q Would you please tell me, sir?

24 A October 1970.

25 Q You prepared these charts here in October of

1970?

A I didn't prepare those charts per se. They were prepared for me or they were prepared by--

Q I want to make certain I understand your answer. These charts, these exhibits of the government--

MISS DAVIS: Your question, Mr. Rao, was, When did he prepare the information which was on the chart? You specified "information" in response to my question. He answered that the information on which the charts were based was prepared in October of 1970.

Q I see. That's what the information was. You mean the information used in the preparation of these physical charts was in 1970, is that correct?

A True.

Q And then did you assist Miss Davis in transferring that information to the charts themselves?

A Yes.

Q And when was that done, sir?

A Within the last three weeks.

Q Let me ask you this further question, if I may. Have you had an opportunity to determine the difference between the sum of monies contained in the invoices submitted to Customs and those invoices submitted to the bank for the purpose of a Letter of Credit? Have

1 you ever had an opportunity to determine the difference,
2 financially speaking, in quantity, financial sum?

3 A No, I haven't.

4 Q Do you know if anyone in Customs has?

5 A (No response.)

6 Q Relative to the dates in issue here?

7 A There may be but I'm not aware of it.

8 Q So that it would be fair to state, would it
9 not, then, that you also didn't have the opportunity then
10 to determine what duty, if any, was lost in that differ-
11 ential?
12

13 MISS DAVIS: Your Honor, Customs duty is not
14 involved in this case.

15 MR. RAO: I know that. It is a question--

16 THE COURT: No. I won't take that.

17 MR. RAO: I have no further questions,

18 Mr. Haroian.

19 REDIRECT EXAMINATION

20 BY MISS DAVIS:

21 Q Mr. Haroian, are domestic valuation standards
22 used for the purpose of determining Customs revenues
23 that are to be paid in importation?

24 A No, they are not.

25 MR. RAO: I'm sorry. I didn't hear your

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Haroian-redirect

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1 answer, sir.

2 THE WITNESS: No they are not.

3 Q When you go about the process of evaluating
4 merchandise in this, for the purpose of this litigation,
5 Mr. Haroian, is that valuation gathered for a particular
6 time period?

7 A Yes.

8 Q What time period would that be?

9 A The time that the entries were made into
10 the commerce of the United States.

11 Q In looking at the evidence of what you would
12 consider the domestic value of the material, particularly
13 evidence of sales of the merchandise, would the time of
14 the sale be a relevant factor?

15 A Yes, it would.

16 Q And how would it effect your opinion as to
17 the weight of the evidence?

18 A Well, if there were significant sales in
19 substantial quantities to indicate that the sales were
20 made at lower prices than indicated on the price list,
21 I would consider it.

22 Q If you were making, as you were in this
23 instance, a valuation of merchandise that was imported
24 in 1967, would you give weight to evidence of sales that
25

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2 were made in 1973?

3 A No, I would not.

4 Q In 1970?

5 A No, I would not.

6 Q Nor 1971, or '72, or '73, or '74, or '75, I presume?

7 A No.

8 MISS DAVIS: No further questions.

9 RECROSS-EXAMINATION:

10 BY MR. RAO:

11 Q Miss Davis was asking you specific questions
12 as to your evaluation of merchandise, correct?

13 A Yes.

14 Q One, at any time in '64, which is the date
15 involved here, were these entries liquidated?

16 A No, they were not.

17 Q In '65 were they liquidated?

18 A Not to my knowledge.

19 MISS DAVIS: Again your Honor, I don't know that
20 liquidation or the whole process in Customs has any
21 relevance.

22 MR. RAO: I am going to tie it up.

23 Q In '66 were they liquidated?

24 A I have no direct knowledge. I didn't take
25 the line over until 1968.

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Q Fine. In 1968 were these entries liquidated?

A They were not.

Q Therefore, you can assume that they were not liquidated in '66, '65, '67 and '64.

A I don't know about all the way back to '64.

Q These entries weren't liquidated in '68?

A Yes.

Q Logic would dictate that they weren't liquidated in '64.

A I can't respond to that. I don't know whether they were. There may have been entries that were liquidated during that period of time.

Q I am talking about the specific entries within these exhibits, sir.

A They were not liquidated.

Q That's what I am talking about, sir. So at that time had you determined the evaluation?

A No, we had not. We were soliciting information.

Q When, sir, did you determine United States wholesale prices?

A (No response.)

Q When?

A When the 592 was instituted.

Q When?

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Harolan-recross

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A In 1970 I made my appraisal.

Q You say that Mr. Brown received a 592 letter
as to wholesale prices?

A I never said such a thing.

Q When did you determine this, sir?

A (No response.)

Q Wholesale prices? I want to know when you
determined it?

MISS DAVIS: That question has been asked
and answered.

MR. RAO: I am trying to refresh his re-
collection, if I may.

A October 1970.

Q October 1970?

A Yes.

Q You determined it?

A Yes, sir.

Q With whom?

A With Agent Ripa.

Q In 1970?

A Yes.

Q Was Mr. Brown informed of it?

A I have no knowledge of whether Mr. Brown was
informed of it.

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Q Well, it was you and Mr. Ripa working together.
I am asking, did you inform Mr. Brown?

A Mr. Ripa was in contact with Mr. Brown.

Q Fine. To your knowledge, did Mr. Ripa inform
Mr. Brown?

A I would assume he did.

Q I ask you, sir, to your knowledge, did he?
Not what you assume.

A I have no such knowledge.

MR. RAO: Will you bear with me for one
minute, your Honor? Can you bear with me for a second?

THE COURT: No. This case is an old case.
If you don't know it now, you will never know it.

MR. RAO: You are right, your Honor.

Q Did you ever receive any correspondence,
Mr. Haroian, from Mr. Brown, prior to the day that you
are testifying to here today, as to the prices of telephones
being sold at prices less than United States wholesale
prices that relate to specific entries within the Govern-
ment's Exhibits?

A Not to the best of my knowledge.

Q Did you ever receive any letter, Mr. Haroian,
from the Vice-President of the United States Telephone
Company to that effect?

emb

Haroian-recross

47

MISS DAVIS: Could we have the time frame, please?

Q On or about January 17, 1971, to on or about June 28, 1971.

A (No response.)

Q I didn't hear your answer, sir.

A I don't recall receiving it.

MR. RAO: All right. I have no further questions, your Honor.

THE COURT: You are excused.

(Witness excused.)

MR. RAO: At this time, your Honor, I again renew my objection to the last two columns insofar as these columns do not accurately reflect that which in fact could be, or should be, or was the wholesale price, so that therefore, granted that this is not an accurate reflection, the last column, which is the conclusion, is not either. That's my objection, your Honor, that I initially made and I renew it.

THE COURT: Same ruling. It is overruled.

MISS DAVIS: Two small items, your Honor.

The first is for the purpose of the record, I am prepared to put on a witness to testify that the summary of value which I handed up to your Honor is an accurate reflection

1 emb

2 of the information, that is to value, which is on the charts.
3 and may henceforth be introduced into evidence. I prefer
4 a stipulation, however.

5 MR. RAO: I can't hear you.

6 MISS DAVIS: I would like to be able to put
7 this in evidence as an accurate summary of the chart
8 with no more weight than the chart has.

9 MR. RAO: Rather than the charts themselves?
10 This is just a reproduction of them.

11 MISS DAVIS: That is correct. Will you
12 stipulate as to the accuracy of these?

13 MR. RAO: Yes.

14 MISS DAVIS: These are Government's Exhibits
15 75 and it is offered in evidence.

16 (Government's Exhibits 75 for identification
17 received in evidence.)

18 MISS DAVIS: The government has one final
19 witness, your Honor, who is, strictly speaking, a rebuttal
20 witness, who is a witness as to an anticipated defense on
21 the statute of limitations. I can put his evidence on
22 now in anticipation of a defense or I can have him wait
23 until the close of the defendant's case. Which is better?

24 MR. RAO: I have no objection to putting
25 him on now. Mr. O'Brien has a busy schedule.

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O'Brien-direct

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MISS DAVIS: Thank you.

The government calls John O'Brien.

JOHN G. O'BRIEN, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MISS DAVIS:

Q Mr. O'Brien, by whom are you employed?

A I am employed by the law firm, Battle, Fowler, Lidstone, Jaffin, Pierce and Kheel and also another firm, Tenaka and Walters, in Washington, D. C.

Q And how long have you been employed by those two law firms?

A Approximately one year.

Q Prior to that time, what did you do?

A I was employed by the U. S. Customs Service, Department of the Treasury, United States Government.

Q Were you employed by the United States Customs Service in 1969?

A Yes.

Q What was your position at that time?

A I was an Examiner, and was later changed to an Import Specialist. The jobs are interchangeable. Just the titles are different.

Q And how long did you serve with the U. S.

emb

O'Brien-direct

50

Customs Service as an Import Specialist?

A The whole time in Customs was 32, a little over 32 years, and about 20 years, roughly, of that, an Import Specialist.

Q Were you an Import Specialist during the period 1964 to 1968?

A Yes.

Q What were your responsibilities in that position?

A I was in charge of an assigned line of merchandise, responsible for the clarifications and value of this merchandise.

Q Was that in connection with the routine importation process?

A Yes, it was.

Q Did there come a time when you had, as part of your responsibilities with the United States Customs Service, Import Specialist, some dealings with the Decorator Telephones that are the subject of this litigation?

A Yes.

Q And when did that contact or responsibility for the Decorator Telephones first begin?

A 19--the early part of 1964 in which we were-- when I say "we" I mean my office, which had the responsibility

emb

O'Brien-direct

51

of valuing and clarifying telephone equipment, were aware of shipments of Decorator telephones coming from Japan through a seller, Greenhill--

Q At that time and as part of your services as an Import Specialist, did you have actual personal dealings with the documents that were involved in the importation of these telephones?

A Yes, I did.

Q You have before you Government's Exhibits 1 through 50 and 1-B through 49-B. Could you tell us if you recognize those documents?

A Yes. These are Special Customs Invoices and a packaging list and an attached sheet indicating description of telephones, quantities, and unit prices.

Q Did you come into contact with those exhibits in the course of your responsibilities as an Import Specialist in 1964, '65, '66, '67 and '68?

A Yes, I did.

Q Now, I show you, Mr. O'Brien, Government's Exhibits 1-A through 59-A and ask you if you recognize those as documents you dealt with in the course of your responsibilities as an Import Specialist?

A No, I don't believe so.

Q You have no recollection of seeing or receiving

emb

O'Brien-direct

52

these documents in the course of the importation of Decorator telephones from '64 to '63?

A No.

Q Did there come a time when you had personal contact with the defendant Paul Brown?

A Yes, sir.

Q Would you explain the circumstance by which that contact came about? First of all, can you tell when it was, please?

A As I stated previously, in early 1964 my office and my staff were aware of importations of decorator phones from Japan, and in the course of preliminary value inquiries, we were forming information from the various importers of these Decorator phones, and also, we noted that on each and every invoice there was a charge, a royalty charge for a party by the name of Paul Brown.

As we were inquiring from these various importers, we got very little information as to the knowledge of what this charge really consisted of, and we finally got some information that Mr. Brown was in New York acting as a consultant.

Q Excuse me, Mr. O'Brien. At this time was Mr. Brown listed as the importer of record on these documents?

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O'Brien-direct

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2 A No, he was not.

3 Q Were you aware of any connection at this time,
4 that is 1964, between defendant Paul Brown and the
5 United States Telephone Company?

6 A I was not.

7 Q Would you continue, please, in telling us how
8 this meeting came about?

9 A My office contacted Mr. Brown. I don't know
10 by memo or phone. And I don't know exactly what number
11 they used. And he did come down to our office, which
12 was then located at 201 Varick Street.

13 Q Now, this meeting, again what time was it
14 insofar as you can recall?

15 A This was, I would say, the middle of 1964 or
16 possibly towards the latter part of 1964. I can't pin-
17 point the date.

18 Q And this took place at your office at 201
19 Varick Street?

20 A That is correct.

21 Q Tell us who was present.

22 A Myself, Mr. Brown and my assistant, Mr.
23 Robert Needham.

24 Q Can you tell us, please, as nearly as you can
25 recall, what you said to Mr. Brown and what Mr. Brown said

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O'Brien-direct

54

1 to you?

2
3 A It was a very short meeting because we were
4 primarily concerned with what this charge represented at
5 the start of a preliminary-value inquiry, and Mr. Brown
6 said that he had patents on this type of telephone,
7 that he had prior experience working with telephone companies,
8 and that he made an agreement with Greenhill-Kato by
9 which he was going to obtain funds for these patent rights.

10 He didn't have any documentation with him
11 on this particular transaction, and he promised that he
12 would get the information from Greenhill-Kato, send it
13 to us, and this would be to our satisfaction. And that
14 was the sum, as far as I can recall, the sum and substance
15 of this conversation, and--

16 Q And in that conversation, Mr. O'Brien, did
17 Mr. Brown discuss his financial arrangements?

18 A No, he did not.

19 Q Did he discuss the Letters of Credit that he
20 had or might obtain?

21 A No, he did not.

22 Q Did he discuss his invoicing procedures?

23 A No.

24 Q Did he show you copies or give you any indi-
25 cation of the existence of Government's Exhibits 1-A through

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O'Brien-direct

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50-A?

A No, he did not.

Q Now, you said that at the end of the meeting you reached an agreement whereby he was to provide you with more information on the royalty charge.

A That is correct.

Q Was that information forthcoming?

A No, it was not.

Q Did you have any personal contacts with Mr. Brown following that meeting?

A My next personal contact?

Q That is correct.

A Would be somewhere in 1969, I believe.

Q Subsequent to this meeting in 1964, did you have any personal communication or contact in any form with Mr. Brown?

A Yes. We had a few telephone--the latter part of 1964 and early 1965 we were following up through my staff and asking for this information, which was not provided.

Q But you had no further discussions with Mr. Brown personally or directly?

A No, except, as I told you--

Q Did you have any other communications with the

emb

O'Brien-direct

56

United States Telephone Company from 1964 to 1966?

A No.

Q Did there come a time, Mr. O'Brien, when, in the course of your responsibilities as Import Specialist, you ordered an investigation of the importation of Decorator telephones which are involved in this litigation?

A Yes.

Q Can you tell us when that was, please?

A That was in 1965.

Q Do you recall the month or the date?

A I believe it probably was set down in our office around October of 1965.

Q In what form did this request take place?

A It went out as a normal value inquiry directed to the treasury representative in Japan to ascertain value information.

Q All right. Fine. Thank you. At that time did you have any evidence--by that time I mean October of 1965--did you have any evidence of the fraud which has been alleged by the government at this trial?

A No, I did not.

Q Did you have evidence of the existence of Government's Exhibits 1-A through 50-A?

A No, I did not.

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O'Brien-direct

57

1 Q When did you first receive the results of the
2 investigation which you had ordered in October of 1965?
3

4 A It was approximately 1966 when it came back
5 from Japan.

6 Q Now, between October of '65 and October of
7 '66, when you received the results of the investigation,
8 in that one year, did you receive any evidence of the
9 fraud which has been alleged here?

10 A No, I didn't.

11 Q In what form was this before you received it? I
12 don't want to hear about the contents.

13 A It was on the normal value format forms
14 that we received from all of our representatives in the
15 various parts of the world.

16 Q In other words, it was a written report?

17 A It was a written report.

18 Q Now, Mr. O'Brien, prior to July 21, 1966,
19 did you have any evidence of the fraud which has been
20 alleged in this litigation?

21 A No, I did not.

22 Q Prior to July 21, 1966 did you have any
23 evidence of Government's Exhibits 1-A through 50-A?

24 A No, I didn't.

25 MISS DAVIS: No further questions.

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O'Brien-cross

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CROSS-EXAMINATION

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BY MR. RAO:

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Q Mr. O'Brien, the matter was referred to Mr.

5

Nakajima in '65, correct?

6

A It was referred to our agency service in

7

Japan and I--Mr. Nakajima, in fact, was our representative

8

who conducted the investigation for inquiry.

9

Q He was the representative in Japan?

10

A Right.

11

Q And he got that in October of 1965, correct?

12

A In October of 1966.

13

Q No, no. When you requested--

14

A I requested it in 1965. I received it in 1966.

15

Q I understand what you are saying. We are

16

talking about the request at issue, please. All right?

17

Now, relative to this initial request, what did you

18

request Mr. Nakajima to do?

19

A I requested, as a normal value inquiry to be

20

conducted to determine the existence or non-existence

21

of export value, foreign value, as pertains to the

22

statutory requirements of Section 402.

23

Q Yes. Now, based upon your knowledge, your

24

experience with the U. S. Customs, would Nakajima go to

25

the seller, Greenhill-Kato?

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2

A Yes.

3

Q He would go, would he not, sir?

4

A That's right.

5

Q And based upon your experience, your knowledge,

6

would Mr. Nakajima say to Mr. Greenhill-Kato, "What did

7

you sell this for? How did you come to this price?"

8

Would he say that?

9

A I don't know what his process of investigatory

10

system would be but it is reasonable to assume that that

11

would be one of the questions asked.

12

Q Based upon your knowledge and experience,

13

you would want to determine, in an investigation such as

14

this kind, the actual price which the importer paid

15

for the merchandise; is that correct?

16

A That is right. That's what Mr. Kakajima

17

went about doing.

18

Q That's what I am asking you. Is that correct,

19

sir?

20

A That's right.

21

Q And let me ask you, Mr. O'Brien, is a Letter

22

of Credit something totally foreign, strange to you?

23

A No.

24

Q I mean, when people deal with foreign countries

25

and purchase items, I mean, isn't it the normal practice

1 emb

O'Brien-cross

60

2 to go by Letter of Credit, sir?

3 A You can have a Letter of Credit; you can have
4 a sight draft.

5 Q Am I correct, sir?

6 A Yes.

7 Q And one other question, Mr. O'Brien. Does
8 the United States Customs in this country, when they want
9 to look at a Letter of Credit--that's not supplied for the
10 sake of discussion by the importer--do they have difficulty
11 getting it from the bank?

12 A If it's required of them, I don't think that
13 they would have any difficulty. If it's required, of
14 course.

15 Q So that we know it, this was given to Mr.
16 Nakajima in 1965, October.

17 A At our request, for a value inquiry.

18 Q Yes, sir. Now let me see, Mr. O'Brien,
19 you testified that--let's talk about Mr. Nakajima's
20 report in October '66 for just a second, would you please?

21 A Yes.

22 Q Now, you have been there a pretty long time
23 at Customs, haven't you?

24 A Yes.

25 Q How long does it take to make up a report

1 emb

C'Brien-cross

61

2 that you have been investigating something for over 8 months
3 on?

4 A It depends on what you are investigating.

5 Q The type of report that he sent you.

6 A That would take a long time.

7 Q How long would it take him to make that up?

8 A It would take a long time.

9 Q How long was a long time in your opinion, sir?

10 A In this case it was a year because there was
11 an evasion there.

12 Q You said it would take about a year to take
13 it.

14 A I was not there. I didn't know the difficulties
15 he had in obtaining appointments. I don't know the
16 difficulty he had in securing documents.

17 From my recollection of the report it was
18 quite difficult.

19 Q And from your recollection of the physical
20 nature of the report which you say was difficult, how
21 long would you say, do you think that it would take a man--
22 it would take someone, in your opinion, based upon your
23 experience, of having written reports yourself, considering
24 the complexity of the case, how long would you think it
25 would take a man to assemble his notes together, put them

emb

O'Brien-cross

62

1 in written form, dictate them, have then typed, recheck
2 them, put them in final form and then forward them on to
3 the United States?
4

5 MISS DAVIS: Your Honor, I question the
6 relevance of Mr. O'Brien's opinion of what an agent
7 conducting an investigation in Japan--how much time it
8 would take--

9 MR. RAO: I asked, your Honor, based upon
10 his experience in having written reports himself in
11 complex matters.

12 THE COURT: Okay. Sustained. So far as I
13 am concerned, the question has been asked and answered.
14 He said a long time.

15 Q Now, Mr. O'Brien, it was your testimony that
16 you received knowledge as to the two invoices when you
17 received the report in October of 1966, am I correct?

18 A Yes.

19 Q Do you recall testifying, Mr. O'Brien, on
20 June 29, 1971, before Federal Judge Pierce?

21 A Yes.

22 A And do you recall, sir, being asked on cross-
23 examination by me, these questions and having given these
24 answers:

25 "Q They got that around when?

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O'Brien-cross

63

1 . "A The middle of 1966. At the time Mr. Nakajima
2 sent the reply to me. He sent the reply directly to our
3 agency service."
4

5 That's at page 136.

6 Do you recall, vaguely, my asking that
7 question and your giving that answer? If you want, you may
8 may look at the answer.

9 A I don't doubt it.

10 Q I just wanted you to see it.

11 A Yes.

12 MR. RAO: Mr. O'Brien, bear with me a minute.
13 I'm trying to get a page here.

14 (Pause.)

15 Q Mr. O'Brien, is it possible that you could
16 have received information relative to the invoice submitted
17 to Customs and the invoice submitted to the bank and the
18 Letter of Credit prior to August of '66 rather than on
19 October 1, 1966?

20 A (No response.)

21 Q Is it possible?

22 A I would say it is highly--I don't believe--any-
23 thing is possible but I would say that would not be the
24 normal way of conducting Customs procedures in this case.

25 We had sent a foreign request or inquiry in

emb

O'Brien-cross

64

1965. Until such time as we get that report back, we have no idea as to what value information is going to be utilized in appraising a particular entry that we are holding.

Q That's not my question. I don't think you understood my question.

A Well then repeat it.

Q Let me repeat it again. Is it possible that you could have received the report from Mr. Nakajima prior to October 1 of '66?

A If he completed it earlier, I would have received it earlier.

Q So it is possible that you could have received it in July based upon your testimony in the first trial, the second trial?

MISS DAVIS: We have already had testimony as to when did receive it.

A Maybe we should have the report and see the date that the report actually came.

Q Fine. But let me ask you, he is your agent, Mr. Nakajima, is he not?

A He belongs to the U. S. Customs Service.

Q Right. The issue is, based upon your testimony before Judge Pierce, you said in the middle of July you

2 received it. You said in the middle of July you had
3 received information from Mr. Nakajima--

4 MISS DAVIS: I beg your pardon, Mr. Rao.
5 That's not what the transcript says.

6 Q Do you want me to read it again?

7 A Yes, read that again.

8 Q I will read it to you again.

9 MISS DAVIS: Page 136.

10 MR. RAO: Yes. I have it. I am going to
11 read back a little further so we can get the flow; is
12 that all right with you, Miss Davis?

13 MISS DAVIS: Would you read first, please,
14 the phras that you were referring to before?

15 MR. RAO: Yes. I was doing it for the
16 convenience of the witness but here is the question I
17 asked.

18 Q I asked you "Had you been asked this question
19 and did you give this answer:

20 "Q They got that around when?

21 "A The middle of 1966 at the time Mr. Nakajima
22 sent the reply to me. He sent the reply directly to our
23 agency service."

24 THE COURT: So you concede that it was
25 the middle of July, is that right?

1 MR. RAO: Beg your pardon?

2 THE COURT: "the middle of '66." You equated
3 that in the middle of July.

4 MR. RAO: I equated that to July.

5 THE COURT: You said "the middle of July."
6 I think you, in all fairness to the witness, you should
7 recite what his testimony said--

8 MR. RAO: Yes.

9 THE COURT: --rather than your interpretation
10 of it.

11 MR. RAO: All right.

12 BY MR. RAO:

13 Q Did you state, sir, based upon your testimony
14 before Judge Pierce, where you stated that in the middle
15 of 1966 you received the reply from Nakajima,
16 could you then, sir, have received this reply some time
17 prior to October 1, of 1966?

18 A I didn't receive the report in July of 1966.

19 Q You didn't receive the report in July of 1966?

20 A No.

21 Q Did you receive a preliminary reply or report
22 from Mr. Nakajima?

23 A No, I had no preliminary report.

24 Q There was no preliminary report; just a final
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O'Brien-cross

67

report?

A That's right.

Q And you received your report in October,
correct?

A To the best of my ability, right now, it was
October.

Q In that report did Mr. Nakajima state when he
had discovered the fact that there had been an invoice
submitted to a bank?

A I believe there was a statement in that report
something to that effect.

Q And Mr. Nakajima had had this matter reffered
to him, you said, in October of '65, correct?

A That's right.

Q So we are talking about October of '65?

A Correct.

Q November of '65, December of '65, January of
'66, February of '66, March of '66, April of '66, May of
'66, June of '66, We are talking about 8 months that
Mr. Nakajima had received your request to investigate,
correct?

A Correct.

Q And to the best of your knowledge, you don't
recall, other than your testimony here, that you received

1 emb
2 Mr. Nakajima's official report in October of '66, is that
3 correct?

4 A That is correct.

5 Q Had Mr. Nakajima been in contact or in touch
6 with anybody other than you, to your knowledge?

7 A Not to my knowledge.

8 Q Not to your knowledge?

9 A No.

10 Q Would Mr. Nakajima be in touch or in contact
11 with anybody in Japan other than himself?

12 A Probably his superior.

13 Q Who would that be?

14 A I don't know. It may have been Mr. Dresser.
15 I don't know who it was. But I have no knowledge of that.

16 Q That's all I am asking you. You don't have
17 knowledge of that?

18 A No.

19 Q Mr. Nakajima came to this country approximately
20 a couple of years ago, do you recall?

21 A Yes, I do.

22 Q Did you ever have a discussion with him at that
23 time relative to the exact date he found out about this
24 bank invoice?

25 A No, I didn't.

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Q Did he ever tell you?

A No, he didn't.

MR. RAO: I have no further questions.

MISS DAVIS: I have no further questions.

THE COURT: All right, you are excused.

(Witness excused.)

MISS DAVIS: Your Honor, the government rests.

MR. RAO: At this time, your Honor, based upon the court's written decision, the court has already said, if I interpret it correctly, the motion for the summary judgment was granted relative to the 32 issues, that your Honor has dismissed the defenses of double jeopardy and cruel and inhuman punishment, and that the only issue that is involved is that of value relative to the other entries Number 2 to apply for summary judgment.

THE COURT: Plus the statute of limitations and also the value limitation.

MR. RAO: I'm sorry; didn't I say that?

THE COURT: No.

MR. RAO: Am I correct?

THE COURT: Those are the remaining two issues as I see it.

MR. RAO: All right. Well, at this time,

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your Honor, I am going to move to dismiss the government's complaint for failure to prove a prima facie case based upon the defenses that I have raised in my answers.

MISS DAVIS: Do you wish argument, your Honor?

THE COURT: Yes.

MISS DAVIS: The government submits that first, as to 32 of the 50 entrys, we have already had judgment that they were knowingly brought in in a false and fraudulent manner.

I submit the introduction of the two otherwise identical sets of invoices, one of which was stipulated to have been given to a bank and the other to Customs, with the discrepancy in price that appears thereon in connection with the presumption that arises from the previous 32 entries as a prima facie case of false and fraudulent entry by Mr. Brown and by the U. S. Telephone Company.

The testimony of Mr. Haroian in connection with the introduction of price lists constitutes a prima facie case as to the evaluation of the merchandise.

As to the statute of limitation question, the burden is on yourself, I submit.

MR. RAO: Your Honor doesn't want to hear my arguments because your Honor has already ruled on them,

so it would be redundant for me.

THE COURT: Yes, I think so.

Are you ready to proceed?

MR. RAO: If your Honor wants to adjourn,
it is up to your Honor. I would be willing--

THE COURT: I usually go until 12:30.

MR. RAO: If your Honor would like to go
earlier today--

THE COURT: Would it help you get your
direct case in in a half-hour?

MR. RAO: No, sir.

THE COURT: All right, we will start it
and go on until 12:30 then.

PAUL R. BROWN, called as a witness by the
defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RAO:

Q Mr. Brown, where do you live?

A I live at 20 East 35th Street.

Q Where is your place of business?

A My place of business is 444 Park Avenue South
in New York City.

Q And what is your occupation?

A I design telephone equipment. I am a consultant

emb

Brown-direct

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to manufacturers with respect to the manufacture of telephone equipment as it applies to all phases of it, and I am an importer of telephone equipment, or I was an importer of telephone equipment.

Q Are you associated with the United States Telephone Company?

A Yes, I am.

Q In what way?

A Presently I am the President of the United States Telephone Company, since January, and prior to that I was a Vice-President.

Q "Prior to that" meaning?

A Prior to January of this year.

Q Up until when?

A January, '75.

Q From when to when were you Vice-President?

A From approximately 1966 to January 1975.

Q And prior to 1966 was there a United States Telephone Company?

A I don't believe so. I would have to check my records, but I believe it became a Delaware corporation in 1966. It might have been late 1965. I'm not quite certain.

Q Alright. Now, did there come a time, Mr. Brown,

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1 when, based upon your occupation, you went and you saw
2 Mr. O'Brien?

3 A Yes.

4 Q When, approximately, was that?

5 A It was approximately in 1964. I don't recall
6 the date.

7 Q Do you know the reason for that, sir?

8 A Yes.

9 Q Would you please tell the court?

10 A Mr. O'Brien had contacted me and he was involved
11 in the appraisal of an importation by a company known
12 as Telephones Unlimited, and he wanted to discuss the
13 pricing on the import documents that were tendered to the
14 Appraiser's Office by Telephones Unlimited.

15 Q And then did you go over there?

16 A Yes.

17 Q Did you have a discussion with him?

18 A Yes, I did.

19 Q What was that discussion, to the best of your
20 recollection? What did he say to you and what did you
21 say to him?

22 Q There were a number of things. One, Mr. O'Brien.
23 wanted to know why the invoices on Telephones Unlimited,
24 importations through a factor known as Patent and Boris,
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2 had an FOB price of \$15.65, and why an importation made
3 by Intercontinental Telephone Company of New Jersey,
4 which was a company identical during that time, had an
5 importation price for the same telephone approximately
6 \$12 FOB Japan.

7 He also wanted to know about the franchise
8 fee that he mentioned.

9 And we also discussed a breakdown sheet that
10 was attached to the invoice which included, in the \$12,
11 the commissions, warehousing, inland freight in Japan and
12 lighterage in Japan--which brings the merchandise to the
13 ship--and a royalty fee.

14 Mr. O'Brien, at that point, instructed me
15 with respect to dutiable and not dutiable as applied to
16 those items.

17 Q Relative to telephones?

18 A Yes, sir. As an example, he told me that
19 packaging, at that time, I believe was non-dutiable, and
20 inland freight was non-dutiable, and certain items were
21 dutiable.

22 Q As a matter of fact, sir, Customs did change
23 their rules as to what was or wasn't dutiable during the
24 period of '64 through '70.

25 A Yes. Since then, they have stated that

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2 everything that enters into--I am informed by Customs
3 that everything that enters into the cost of the merchandise
4 is dutiable

5 And then Mr. O'Brien, at that point--when it
6 came to the \$12 price, I said "What problems would there
7 be for the 50 or 60?" He explained to me, which was new
8 at the time, the thing called "Cost of production."

9 He took me over to a table in which they had
10 a series of electronic parts. He said, "We, here in
11 Electronics, can go to a known manufacturer in the United
12 States to get the cost of parts so that if we doubt the
13 value of goods imported into the country, what we can do
14 is go to the cost of production and inquire of domestic
15 manufacturers what they would get for the same type of
16 merchandise, what they would sell it for, or what it would
17 cost the manufacturer to distribute, and thereby establish
18 the cost of production or the value of the article."

19 In our case, Mr. O'Brien asked me "How do we
20 do that with you?"

21 And I said, "Well, there is Werner Electric
22 in Indianapolis; there is Automatic Electric in Chicago;
23 and there are a number of other manufacturers, all of
24 whom have available parts that they sell if you want to
25 build a telephone of this type."

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1 As for the housing or exterior, no one makes
2 it in this country. For this you would have to go--and
3 at that time there was considerable importation from
4 Denmark of similar phones, and not of original manufacture,
5 but they were being imported prior to our importation for
6 a period of several years. But there was similar merchandise,
7 and there was cost of production that was explained to
8 me that they could go to.
9

10 Q Did Mr. O'Brien request certain papers from
11 you which you were remiss in not submitting to him?

12 A To the best of my recollection, I was not
13 requested to produce any documentation at that time.

14 The next period in which I have spoken to
15 Mr. O'Brien in which he requested documentation--

16 Q Was on the telephone.

17 A --was on the telephone when Mr. O'Brien very
18 cooperatively indicated to me that the telephones I had
19 that were brought into Los Angeles and seized by Customs
20 forfeited, because they claimed that the price represented
21 on my invoice was not true.

22 Mr. O'Brien then said that anything that came
23 to the port of New York or any port in the United States
24 would be similarly seized, and then instructed me on how
25 to make out my invoice, correct it so it could be accepted,

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1 and said "I can give you all the cooperation and information
2 you need so that you will not suffer the same problem
3 again."

4
5 MISS DAVIS: Could we get the time of this
6 conversation?

7 Q Will you fix the time, approximately?

8 A I cannot recollect but it was approximately
9 in 1967 or '68, but the records on the desk would indicate,
10 and there are exhibits of the previous trial to indicate
11 the seizure of 102 Duchess in Los Angeles, and it was
12 at this time, and I think there is one right there that
13 indicates the time of the next conversation, the Los Angeles
14 seizure.

15 And then Mr. O'Brien requested if I could
16 give him information--

17 Q Don't look at these. I just have them here.

18 A (Continued)--could I give him information
19 concerning the Los Angeles matter. And I said, "I have
20 replied to the District Director of Customs, Director
21 Knoke, who requested of me at that time verification of
22 my selling price from Japan to authenticate, determine
23 value, and for an explanation to the Director of Customs
24 in Los Angeles why there were a number of other invoices
25 relating to the same shipment. And I sent a copy of this

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2 to Mr. O'Brien, which was the copy of my letter to the
3 Director of Customs in Los Angeles. And with the receipt
4 of that letter, the Director of Customs then ordered
5 San Diego, and the port of Los Angeles, and Oakland, to
6 release my shipments. That was my conversation with Mr.
7 O'Brien at that time.

8 Q Excuse me. We went from '64 to '68, did we
9 not?

10 A Yes.

11 Q I want to direct your attention, if I may,
12 to subsequent to the initial visit you had with Mr. O'Brien,
13 which was in 1964. Did you receive any communication
14 from Greenhill-Kato to the effect that they had been
15 visited by Mr. Nakajima in Japan, and if so, when?

16 A In what particular month of 1965? I cannot--

17 MISS DAVIS: Can I have the question read?

18 (Question read.)

19 MISS DAVIS: Mr. Rao, that's several layers
20 of hearsay. As far as I know, there is no representative
21 of Greenhill-Kato who is going to be here.

22 MR. RAO: It is hearsay except for the fact
23 that we are talking about the statute of limitations here,
24 and it is relevant, and it goes to the issue as to when
25 in fact Mr. Nakajima was told by Greenhill-Kato who he was

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2 allegedly supposed to indicate, that there was one invoice
3 to Customs and another to the bank, so that the knowledge
4 given to Mr. Nakajima can be imputed to be the knowledge
5 of Customs here.

6 MISS DAVIS: Mr. Rao, I don't question its
7 relevance for one moment. I simply question the ability
8 of Mr. Brown to testify as to what someone else was saying
9 to some organization which is over in Japan

10 THE WITNESS: Your Honor--

11 THE COURT: Wait a minute. Don't volunteer
12 anything, Mr. Witness.

13 I object strenuously to colloquy between
14 counsel. If you have an objection, you address it to the
15 court. I have heard your objection and I sustain the
16 objection.

17 BY MR. RAO:

18 Q To your knowledge, Mr. Brown, when were you
19 informed that Customs was concerned with an invoice that
20 was sent to a bank and with the invoice that was submitted
21 to Customs for the purpose of duty?

22 A Early in 1965.

23 Q In 1965?

24 A Yes. There was evidence to that effect by
25 letters from Japan--

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THE COURT: Wait a minute. You have given the answer. Don't volunteer anything.

Q Now, Mr. Brown, I show you the government's exhibits, and I think you recall what Mr. Haroian testified to, and he explained that this is really column 1, that says, "Government's Exhibits," and that this is column 2; and we know what column 2 is, correct?

A Yes.

Q What is it?

A Column 2 is an entry date.

Q Column three?

A An entry number.

Q Column 4 is what?

A Letter of Credit relating to that shipment.

Q Column 5 is what?

A The products ordered on that credit.

Q Now we get to column 6, and then we get to column 7, right? Column 6 is what?

A Column 6 is the seller, Greenhill-Kato, invoice price and actual selling price to the U. S. Telephone Company and other customers.

Q Who signs the Special Customs Invoice?

A The seller.

Q Who was that?

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2 A Greenhill-Kato.

3 Q Do you sign it?

4 A I do not.

5 Q Did the United States Telephone Company sign
6 it?

7 A They did not.

8 Q Who signed the documentation relative to the
9 Letter of Credit?10 A A factor, and a bank, and Greenhill-Kato
11 and their bank.12 Q Have you explained the "Second Invoice" in
13 this column?

14 A Yes.

15 Q Have you explained that?

16 A That second invoice is part of a series of
17 about 10 invoices.

18 Q What do you mean, sir?

19 A They represent costs that were charged to the
20 United States Telephone Company separately, and to me
21 separately, which was taken from the Letter of Credit,
22 sent by the factor, of which the factor was aware. And
23 that money was utilized in Japan for the payment of
24 salaries to engineers, for packaging, for telephones
25 that were designed and were discarded as unacceptable,

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2 for tools and dies that were manufactured but not used,
3 for defective merchandise that was unshipped, for sample
4 charges for telephones sent around the world to customers,
5 for legal expenses and patents on these telephones, for
6 the remittance of rebates to factors from the Letter of
7 Credit of commissions to them for opening a Letter of Credit,
8 and the difference between the price of \$12 and \$19.20
9 or \$21 for different periods all relate to a breakdown of
10 these expenditures taken from the Letter of Credit.

11 Q Is it your statement, then, that the difference
12 between these two columns is the difference between (a),
13 the raw purchase price, per se, and--

14 A The factory price of the telephones sold by
15 the manufacturer.

16 Q In contradistinction to that inclusive of
17 other items relative to expenses?

18 A General overhead expenses, yes.

19 Q Let me ask you one simple question, Mr. Brown.
20 Why do you not issue two Letters of Credit, one to re-
21 flect that price this was shown on the invoice submitted
22 to Customs and one to take into account those other items,
23 expenses and costs you have now testified to?

24 A Because the seller couldn't negotiate such
25 a Letter of Credit for general expenses and the factor

wouldn't send such a Letter of Credit abroad because it would be too complex.

Q Is it normally done?

A Yes.

MISS DAVIS: Is what--

Q To wit, is it normally done to submit two letters of credit?

A On one product?

Q Yes.

A Oh, no. For 300 years one Letter of Credit is sent abroad to anyone, and from that Letter of Credit, there is extracted the purchase price of a product and service and, and separately, other services.

Q You have testified that column 7 represents other invoices.

A Yes.

Q Mr. Brown, when you said there were differences in these other invoices, is there official documentation to demonstrate the differences in those two prices?

A Yes. That was supplied to agents.

Q What do you call that?

A These are called debit notes.

Q And do you have debit notes that can explain to a certain degree the differences in prices?

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A Yes, I have.

Q Do you have any samples of those?

A These are them.

Q I show you Defendant's Exhibit A and ask you for the period involved, considering the periods of 1964 through 1968, does that demonstrate why there is a difference in these two?

MISS DAVIS: Prior to answering that question, could I see what it is? Could we lay a foundation for what the exhibit is, and could you introduce it in evidence?

MR. RAO: I thought I laid the foundation. He already explained what they were. I am now asking him if in fact they demonstrate this. If he does say yes, then I am going to offer them in evidence.

MISS DAVIS: All right. First I would like to see them before you offer them.

MR. RAO: You will.

MISS DAVIS: And, your Honor, I object to the form of the question, the last question, asking him whether or not these are an explanation for the second invoice..

Q I withdraw the word "explanation" and I ask you, do they relate?

A Yes, they do.

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2 THE COURT: Haven't you seen those before,
3 Miss Davis?

4 MISS DAVIS: No, your Honor. I have not.
5 Many of these appear to be for the California telephones.
6 I have no objection to your introducing the appropriate
7 debit notes but I think these need a little bit of
8 cleaning up as to which debit notes are relevant to these
9 telephones.

10 MR. RAO: I will ask him to go through them.

11 I introduce this subject to their being
12 relevant to the issues on trial and ask you to mark them
13 in evidence.

14 THE COURT: How can we mark them? We can't
15 mark them until we find out what they are.

16 I would suggest that during the recess you do
17 it.

18 MR. RAO: I shall do it then, your Honor.

19 Okay.

20 BY MR. RAO:

21 Q Mr. Brown, the government's exhibits relating
22 to the wholesale prices--I think those were Government's
23 Exhibits 1 through 55, am I correct? Government's Exhibits
24 1 through 55, the wholesale prices--let me ask you,
25 Mr. Brown, every time you sold telephones to somebody,

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1 is the price that you got for the telephones the price
2 stated here on Government's Exhibit 51?

3 A It would be fair to say that approximately
4 5% of our sales, perhaps as high as 10%, might be reflected
5 by the wholesale selling price, so that 85, 90 or 95%
6 of our sales are of a considerably less amount.
7

8 MISS DAVIS: Could we have a time for that
9 question, please?

10 Q What was the time?

11 A From the inception of our selling telephones
12 until the present.

13 Q Mr. Brown, you have been in business how long?

14 A 35 years.

15 Q You do business with many companies?

16 A I do.

17 Q Name some of them, would you please?

18 A Sears Roebuck, Montgomery Ward, Western
19 Electric, the Bell System, Macy's.

20 Q Have you ever seen wholesale selling price
21 lists before?

22 A Yes.

23 Q And these wholesale selling price lists that
24 you have seen before from other companies, is that the
25 price the company sells the given item for?

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2 MISS DAVIS: Your Honor, I object to Mr.
3 Brown's testifying as to what other companies sell products
4 for.

5 MR. RAO: I withdraw the question.

6 THE COURT: Sustained.

7 Q Based upon your experience, Mr. Brown, in
8 dealing with many companies, have you been shown prices
9 like wholesale price lists before?

10 A Yes.

11 Q And based upon your experience in dealing with
12 these companies, Mr. Brown, is the price that you have
13 purchased the item for--

14 MISS DAVIS: I'm sorry.

15 Q --the price that was demonstrated on the
16 wholesale list? Is this the price that was the price for
17 which you purchased a given item?

18 A Unless it is fair-traded, no.

19 MISS DAVIS: Your Honor, I still don't under-
20 stand the question. I am not sure--

21 MR. RAO: I will withdraw it and rephrase
22 it.

23 THE COURT: All right.

24 Q On a wholesale price list, Mr. Brown, would
25 it be fair to state that this is used as a bargaining

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point downwards?

A Yes.

MISS DAVIS: By whom, your Honor?

MR. RAO: By the person who has the whole-sale price list.

THE COURT: By the seller.

Q Is that true?

A Yes.

Q Explain that, please.

A All right. It is the practice of many companies, except those that are fair-traded, to issue a price list like for a number of very small stores who buy one or two items, to put out a price list, a very high list, such as a \$35 selling price--

Q Louder, please.

A --such as a \$35 selling price, in our case, \$35.50. This would prevent the small retail merchant who buys one or two pieces from selling it for a 2 or \$3 profit and eroding the selling price of a company like Macy's.

Macy's, on the other hand, observing the whole-sale selling price of \$35.50, would request approximately \$5 each for advertising purposes resulting in Macy's ultimately buying this product, as our invoices can

1 emb Brown-direct 89

2 testify and as has been shown to customers--will sell
3 for in the area of about net for about \$28.50 or \$29
4 after the discounts and the advertising.

5 In the case of large wholesalers like the
6 Radio Shack, they have purchased this telephone at
7 \$25.50.

8 In the case of Litt Brothers in Philadelphia,
9 during the period of time in question, in '74 and '75,
10 these telephones--and in the case of Seville--were sold
11 at cost F.O.B. Japan. I believe it was purchased for
12 something like--it was less than cost. It was purchased
13 for about \$15 and sold for \$10.

14 In the case of Matoi, that telephone was
15 never sold. It was junked.

16 Q Who?

17 A M-A-T-O-I.

18 Q Is it on here some place?

19 A Yes.

20 Q When you say "Matoi," are you referring to--

21 A Matoi.

22 Q Was this ever sold to Matoi?

23 A About six pieces. And that--

24 MISS DAVIS: May I request the time?

25 THE COURT: Yes. Fix the time.

1 A Yes. In '65, '66, '67, they were sold
2
3 ultimately, eventually, for what they were sold for in--
4 Can you tell me the price in Japan? I can't
5 see it from here.

6 Q \$17.90.

7 A To the best of my recollection, that may have
8 sold anywhere from \$18 to \$20.

9 Q Did it ever sell for \$79.95?

10 A Yes, it did. We did sell, as a matter of fact,
11 about six or seven units for that price and had them
12 returned to us. But they were sold and returned.

13 In the case of--if I may clarify it--

14 Q I would like very much if you would let me
15 ask the questions. I want to go through this, Mr. Brown,
16 all right? I don't want you to pick ten at random and
17 then go back to two.

18 As to item No. 1 in Government's Exhibit 70,
19 they have here Majesty, Napoleon I, Napoleon II, Cleopatra,
20 Mandarin, and the rest of them; do you see them?

21 A Yes.

22 Q And you have the U. S. Wholesale price?

23 A Yes.

24 Q Total domestic value, \$11,967.50; can you see
25 that?

2 A Yes, I can see that.

3 Q Now, tell me, Mr. Brown, to the best of your
4 recollection, what did you sell the Majesty telephone for?

5 MISS DAVIS: Time, please, sir.

6 THE COURT: Time; yes.

7 Q Relative to this specific entry, to the
8 best of your recollection.

9 A In 1964, to the best of my recollection, we
10 sold about 50% of those telephones at about \$65 and the
11 other 50% in a range of between 50 and 85.

12 Q But you didn't sell 25 of these items for
13 \$125 each?

14 A Its possible we did, sir.

15 Q All 25 for \$125 you sold?

16 A Yes, sir.

17 Q And Napoleon I--there are 47 Napoleon I
18 telephones. The wholesale price was \$87.50.

19 A They were never sold, sir. They were returned
20 to us and we sold very few--three or four.

21 Q Napoleon II?

22 A The same.

23 Q Cleopatra?

24 A The same.

25 Q Mandarin?

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2 A Mandarin--how many units are there?

3 Q It says 7.

4 A 7?

5 A Yes.

6 Q It's hard to answer that. We did sell some
7 at 90 and the bulk of them that we had taken in, a total
8 quantity of 500 units, was sold for \$25.

9 Q We now go to No. 2. What about JO-8?

10 A Now, the JO-8 was--

11 Q JO-8.

12 A Are you talking about 99 units?

13 Q Yes; at \$35.50.

14 A The bulk of all JO-8s were sold in the price
15 range of 25 to \$30.

16 Q What about Cleopatra I, 35 units?

17 A They were never sold.

18 Q Cleopatra II, 59 units, \$100.

19 A The same, sir. They were sold and returned.

20 Very few in number.

21 Q You have your hand over your face and your
22 glasses near your mouth and I can't hear you.

23 A Yes, sir.

24 Q Item 3, Majesty Gold, 30 items, \$125.

25 A That would be the same as for Majesty Gold

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on top.

Q To wit?

A To wit, that a number of them were sold between price ranges of \$65 up to \$125.

Q That means all the Majesties?

A Yes, except for Majesty Silver; that didn't sell. They were returned to us. Majesty Antique were returned to us.

Q What about Duchess?

A We sold quite a few of those. The average price of that was the same as the JO-8, approximately 25.50 to \$32, the net price range.

Q You said Matoi already. You told us about that.

A Yes. That was disastrous.

Q Item 6, you have Ivory, Black, Ivory, Ivory, all \$35.00. Do you recall anything about that?

A I believe, from here, that refers to the model JO-8. It doesn't specify model, if you will note, but I think that refers, from what I can see, to the JO-8. Again, they sold between 25 and \$31, with the exception of the Black, which many were returned back to us and didn't sell, and were eventually discounted; about \$20.

1 Q Can this be said, generally speaking, without
2 wasting the time of the court, as to all these items on
3 these charts submitted by the government, that here we
4 have a theoretical number of telephones, that if they
5 were sold at a given price, the wholesale price, then
6 this amount would result, is that correct?
7

8 A I didn't understand your question, sir.

9 Q Let me ask you this, Mr. Brown: We know that
10 this last column here, in all the government's exhibits,
11 represents the multiplication of the wholesale price
12 as against the quantity of a given telephone; correct?

13 A Yes.

14 Q If in fact that quantity is incorrect, if
15 in fact the United States wholesale price is incorrect,
16 then the total domestic value is incorrect; is that correct?

17 A Yes, sir.

18 Q Can you look through these charts, Mr. Brown,
19 please, and tell me any one given item that is absolutely
20 correct on the total domestic value quantum sum?

21 A They are not?

22 Q Any given one?

23 A They are not, sir.

24 THE COURT: Mr. Rao, I think at this time it
25 would be a good point to stop since you have apparently

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2 finished with the charts, so we will be in recess until
3 2:00 o'clock.

4 MR. RAO: Thank you sir.

5 (Recess to 2:00 o'clock p. m.)

6

7

AFTERNOON SESSION

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2:00 p. m.

9

PAUL R. BROWN, resumed.

10

DIRECT EXAMINATION CONTINUED

11

BY MR. RAO:

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14

Q Brown, if you recall, I had asked you to
identify the debit notes were reflected in column
7 of Government's Exhibit 71, et cetera, and you did.

15

A Yes.

16

MR. RAO: I now show them to Miss Davis.

17

Those are sample debit notes.

18

MISS DAVIS: What do these have to do with

19

this?

20

MR. RAO: Additional sample debit notes.

21

MISS DAVIS: I have no objection to the

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introduction of this exhibit.

23

THE COURT: It may be received.

24

(Defendant's Exhibit A for identification

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received in evidence.)

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2 Q Now Mr. Brown, very briefly, please explain
3 to the court what these debit notes represent in terms
4 of their relationship to the seventh column in Government's
5 Exhibit 71 which is here in evidence?

6 A They represent invoices reflecting charges
7 developed in Japan with respect to the manufacture and
8 export of these telephones.

9 Q Briefly, these headlines, what are they? Do
10 they represent, to wit, costs for employees?

11 A Employees? They represent banking charges in
12 Japan, warehouse charges in Japan for these telephones
13 that were unsold, and some that were sold.

14 They represent printing charges for these
15 telephones, for pamphlets, for sample charges sold to
16 various customers around the world, color photography,
17 and costs of drawing paper, costs of, again, advertising
18 literature, and for various pieces of tools and dies
19 relating to this merchandise.

20 Another one here is repairs before these
21 telephones were shipped. They were inspected, We paid
22 our price to the manufacturer, and sold them.

23 When they sold them, they were inspected.
24 They had to be repaired, and these were the charges for
25 the repairs. Many of them were defective. This represents,

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2 for Cleopatra and Napoleon, those that were unsold, and
3 in Japan approximately, oh, maybe 10 or \$12,000 for parts
4 that were never shipped but that related to these same
5 telephones, Cleopatra and Napoleon, and that's that invoice.

6 Then airfreight charges were separately billed;
7 and then monies remitted to the factor who opened up
8 Letters of Credit for \$1 each per phone.

9 There is a remittance to Mr. Siegal who was a
10 customer of Greenhill-Kato. And there are registration
11 fees, patent fees for these telephones in Japan, and an
12 employee's salary and bonuses--he was paid on the average
13 of \$1000 a month--and charges relating to the preparation
14 of other telephones.

15 Q So that this is what you meant when you
16 testified earlier that through that Letter of Credit you
17 were able to defray expenses?

18 A Yes.

19 Q Now, Mr. Brown, back to this chart. Mr. Haroian
20 testified as to the United States wholesale price being
21 the best available information he had; do you recall him
22 testifying to that?

23 A Yes, I do.

24 Q Do you, Mr. Brown, have invoices, to wit,
25 invoices that represent the actual price of a given sale

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2 for the given item that relates to what Mr. Haroian
3 testified to, the United States wholesale price?

4 A Yes, I do.

5 MR. RAO: Could I please have these marked
6 for identification in one bundle?

7 (Defendant's Exhibit B marked for identifi-
8 cation.)

9 MR. RAO: I will show them to you. Just let
10 me have him identify them.

11 Q Are these such invoices?

12 A Yes.

13 Q One other question, Mr. Brown: Does the
14 terminology that the government has used on these model
15 numbers of units--is it absolutely accurate?

16 A No.

17 Q For the sake of explanation, when you have
18 Continental Black, Continental Gold, Continental Ivory, what
19 do they mean by that?

20 A Well, the invoice will show that that is
21 JO-8 Continental.

22 Q So these are JO-8s too?

23 A Yes. And JN-4s.

24 Q Are there inaccuracies, if you will, relative
25 to classification as to title?

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2 A Well, Colonial would also be called Early
3 American.

4 Q All right. Anything else?

5 A Well, there is Ivory Black and Ivory, and it
6 doesn't state that it is JO-3 Continental or Continental
7 Black. And the Colonial would be described as Early
8 American. And the Continental Ivory would be described
9 as JO-3 Continental.

10 Q And here?

11 A No, that is correct. But it would be--yes.
12 It would state one more thing on the invoice: it would
13 say U. S. Continental, without housing.

14 Q And these invoices I asked you to identify
15 relate to the particular telephones on the charges of the
16 government, correct?

17 A Yes.

18 MISS DAVIS: Your Honor, may I have a brief
19 voir dire on this?

20 THE COURT: Yes.

21 VOIR DIRE EXAMINATION

22 BY MISS DAVIS:

23 Q Mr. Brown, can you tell me exactly what this
24 document represents, this yellow carbon document that I
25 have in my hand?

2 A That's the United States Telephone Company
3 invoice describing a shipment made to a customer, on the
4 face of that invoice, for a specific telephone they
5 purchased.

6 Q Do you have any personal interest, or does
7 anyone related to you have any personal or commercial
8 interest in any of the buyers that are listed on these
9 documents?

10 A No.

11 Q Can you look at the documents and tell me if
12 they indicate when the telephones involved in those sales
13 were shipped into the United States?

14 A Yes. Shipped into the United States?

15 Q Yes.

16 A It would be within a period of one year
17 preceding the shipping date on the invoice.

18 Q What does the shipping date on the invoice
19 reflect?

20 A This would be November 1, 1968, which would
21 mean we would have imported it between October or November
22 preceding this date, 1967.

23 Q On what did you base the date that is placed
24 in the column that is labeled "Shipping Date"?

25 A The procedural method is that when you ship

1 out merchandise, you invoice the customer within a week's
2 time of the shipment of that merchandise, and you place
3 the date shipped, which is 11-1-68 to correspond to a
4 bill of lading.
5

6 Q So that if it says on there "Date Shipped:
7 11/1/68," it was probably shipped within a week of
8 11/1/68, approximately?

9 A Prior to 11/1/68.

10 MISS DAVIS: Your Honor, since the Decorator
11 telephones that are involved in this case were imported
12 into the United States at the latest on September 3, 1968,
13 I would object to all of that evidence insofar as it
14 relates to telephones that were shipped after September
15 3, 1968.

16 BY MR. RAO:

17 Q Mr. Brown, do these invoices represent the
18 sale of the telephones that are indicated in the government's
19 exhibits?

20 A Yes, they do. Some are for September, '68.

21 MR. RAO: I offer it in evidence, your Honor.

22 MISS DAVIS: Your Honor, the only evidence
23 in this case is for those telephones that were shipped
24 from 1964 through September 1968. My inspection of those
25 invoices shows that most of them are in connection with

1 telephones that were shipped after September of 1968.

2 All of them in my inspection were for '68 or later;
3 hence they could not possibly be the telephones that are
4 involved in this case.
5

6 THE COURT: I will give you one more chance.

7 BY MR. RAO:

8 Q Mr. Brown, these invoices relate to what?

9 A They relate to merchandise--and I haven't
10 reviewed them all--merchandise shipped in September,
11 October, November and December of '68.

12 Q By the United States Telephone Company to
13 a purchaser?

14 A Yes.

15 Q How long does it take for you to ship merchandise
16 to a given customer?

17 A Well, we have to have it in stock. That means
18 that it has to be shipped from Japan at the latest--in
19 order to ship it in September, it would have to have been
20 shipped from Japan in July. It had to be shipped in July.

21 Q When did you submit the order?

22 A The order would be submitted in January at
23 the latest, and the Letter of Credit was approximately in
24 January of that year for the entire year.

25 Q Here is the question: Here you have a shipment,

1 emb

2 am I right?

3 A Yes.

4 Q August 9th?

5 A Yes.

6 Q When was this shipment initially transmitted

7 to Greenhill-Kato so that it could be reflected on a

8 bank invoice relative to a Letter of Credit which could be

9 reflected on the government charts?

10 A The Letter of Credit and purchase order would
11 initiate in January of '68 for the November invoice.

12 MR. RAO: At this time, I offer it in evidence,
13 your Honor; especially since it was the agent, your
14 Honor, who testified that, since he had no better information
15 than the wholesale price, he could not then go to direct
16 sellers, purchasers, in this country. And now we are
17 showing the information.

18 THE COURT: He also testified that the
19 information was requested and was never furnished.

20 MR. RAO: That's what he testified to, your
21 Honor.

22 THE COURT: I assume that the U. S. Attorney
23 has never seen these before?

24 MISS DAVIS: That is correct, your Honor.

25 THE COURT: I am going to exclude it.

BY MR. RAO:

Q Mr. Brown, may I ask you a simple question? Relative to these charts, and the United States wholesale price, considering the sixth column, which is your first invoice price, what, according to your usual business procedure, is your markup for the United States wholesale price?

A Usually from the first invoice, which is F.O.B. Japan, we would go from 1 to 1.2 for the wholesale selling price.

Q To translate that tangibly--

A \$12--

Q --let me ask you specifically a question. That was too general.

Let's take, for the sake of argument, 15 Government's Exhibit 15 there, April 23; do you see it, Mr. Brown?

A Yes.

Q All right. You see Continental Ivory, Black, Gold, and Duchess, and these are JO-8s.

A Yes.

Q You notice 12.72, 12.72, right?

A Yes.

Q Okay. What is your markup from this 12.72

figure in the wholesale market when you sell it?

A It would sell for about 27 to \$30 at the most.
1.2 to 1.5% of the F.O.B. cost.

Q About \$27?

A Yes. 27 to \$30 at the most.

Q Take Duchess over here; do you see Duchess?

A Yes.

Q And it says 13.52 is the first invoice price,
per unit.

A Yes.

Q Do you see that?

A Yes.

Q What was your markup there?

A It would sell for about anywhere from 28.50
to \$31.50.

Q Let's go to this one, \$90,000. Exhibit 12.
Continental Ivory, I guess again this is JO, correct?

A Yes, sir.

Q We are talking about JO also.

A Yes, sir.

Q Again, it would be reflected the same way;
12.72 would be reflected as you have testified.

A Yes.

Q And take Duchess here, 500 Duchess; the first

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invoice price was \$37.52; your markup would be?

A 10.2 or \$27.

Q Would it be fair to state, Mr. Brown, that keeping in mind the government's exhibits as a reference, when you sell the merchandise in the wholesale market, could you tell us, was there a rule of thumb as to markup from the first invoice price?

A Most importers use the rule of thumb.

Q What is yours?

A 1.2 to 1.5.

MISS DAVIS: Can we have a time on these questions, your Honor?

THE COURT: Yes.

MR. RAO: I said considering the government's charts, within the time of the charts.

THE COURT: All right.

Q Now, relative to value, Mr. Brown, you have already testified, have you not, sir, that there was merchandise here that was in fact never sold by you; is that correct?

A That is correct, sir.

Q Now, on these charts over here, where we do not have the total domestic value, we only have the total second invoice value, do you see that? Do you see that?

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A Yes, sir.

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Q What do these charts or what do these models, the number of units, represent?

5

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A They represent housings of telephones without components.

7

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Q You mean housings in contradistinction to the finished product as such?

9

10

A Yes, sir.

Q Is that what you are saying?

11

A Yes, sir.

12

Q That's a differentiation?

13

A Yes, sir.

14

15

Q All right. Now, these housings, were they all sold by you?

16

A No, sir.

17

Q What were these housings used for?

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A They were originally intended to supply most of them, all of them, to Sears Roebuck and to other department stores, but the telephone company, who was supposed to hook them up on the subscribers' premises, didn't do so, and couldn't do so, and resisted the introduction of these telephones, although they had been approved by the telephone company for a connection on customers' lines in their homes, with the result that

1
2 many of these were used for parts and many were sold at
3 a distress price to resort areas, amusement areas, so
4 that many of these phones sold for as little as \$9.

5 Q All right. Now, based on the fact, Mr. Brown,
6 that United States Telephone Company bought this merchandise,
7 these telephones, and that you were aware of it, were you
8 also aware that the United States Telephone Company sold
9 these phones?

10 A Yes.

11 Q And, based upon your knowledge of bringing
12 these phones in and the sale of these phones, I ask you,
13 when Mr. Haroian testified that the fair wholesale price
14 is what all these figures represent in column 3 of the
15 charts, I ask you, sir, are these a fair and accurate
16 recitation of your wholesale price?

17 A They are not.

18 Q Now, there came a time, did there not--
19 and I forget who it was but it was either Mr. O'Brien
20 or Mr. Haroian who testified as to Mr. Ripa, when you saw
21 Mr. Ripa, do you remember that?

22 A To the best of my recollection, I saw Mr.
23 Ripa--

24 Q No. Do you remember?

25 A Yes, I do.

1 emb

Brown-direct

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2 Q Can you tell us when and where?

3 A Ripa came to my office at 444 Park Avenue
4 South in July or August of 1970.5 Q Now, I want to direct your attention specifically
6 to this particular segment of the conversation with Mr.
7 Ripa that's relevant to the issues on trial here. Did
8 Mr. Ripa, at that time, tell you that the statute of
9 limitations was running out?

10 A Yes, he did.

11 Q What was that conversation with you and Mr.
12 Ripa, Agent Ripa?13 A He said he was here because the statute of
14 limitations would run out sometime in June of 1971, and
15 he was here to collect such data as he could in connection
16 with the importations of telephones which were--and he
17 specified copies of letters of credits, copies of
18 correspondence, copies of agreements between sellers,
19 manufacturers, and U. S. Telephone Compnay, any and all
20 correspondence, any and all letters of credit, any and all
21 data relating to the importation.22 MR. RAO: If your Honor please, at this time
23 I would just like to read in the testimony from Agent
24 Ripa who testified on May 20, 1971 before Judge Ryan on
25 cross-examination, my question.

1 "Q The statute of limitations was going to expire
2 when on this civil matter?
3

4 "A Some time next year; I believe this year--'71.

5 "Q When in '71?

6 "A I don't recall exactly. Probably July. I
7 think it is the middle of the year."

8 Q Do you recall Mr. Ripa testifying to that before
9 Judge Ryan?

10 A I recall my conversation, sir.

11 Q You heard me read the testimony of Agent Ripa.
12 Does this conform with your memory of the conversation you,
13 yourself, personally had with Mr. Ripa?

14 A It does.

15 MR. RAO: I have no further questions.

16 CROSS-EXAMINATION

17 MISS DAVIS:

18 Q Very few questions. First, will you tell us
19 what the relationship is between yourself and Greenhill-Cato?

20 A Yes. Greenhill-Cato is a seller, an exporter of
21 telephones. I am a purchaser.

22 Q Well, there was more a relationship than that,
23 was there not? Didn't you have a contract with Mr.
24 Greenhill-Cato?

25 A Of course.

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Brown-cross

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Q Would you tell us what the nature of the relationship was that was established by that contract?

A In 1963 I requested that Greenhill-Cato act as an export agent and buy telephones from the manufacturers known as Oki Electronics and Canda Electronics with whom I had made a contract to purchase telephones from. Greenhill-Cato was named in that contract between Oki Electronics, Conda, Niko, and the Telephone Communications Council of Japan, and Greenhill-Cato was specified as the purchaser from these factories paying them and selling to the United States Telephone Company.

Q So it is fair to say that Greenhill-Cato was your agent; is that correct?

A Well, I don't know the meaning of your term, Ma'am. They were sellers, they were shippers, and they were export agents. They were export agents on our behalf.

Q And by "our behalf" you mean what? What do you mean by the word "our"?

A Greenhill-Cato was United States Telephone's Export agent and seller.

Q Thank you. The two sets of invoices which are Government's Exhibits 1 through 50 and 1-A through 50-A-- were these prepared by Greenhill-Cato?

A Yes.

1 emb

Brown-cross

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2 Q On your behalf?

3 A Yes.

4 Q You testified, Mr. Brown, that you generally
5 use a 1.2 markup; is that correct?

6 A Yes, ma'am.

7 Q Could you explain to the court, please, what
8 you mean by a 1.2 markup?

9 A Yes, ma'am.

10 Q Mathematically what do you mean?

11 A A telephone shipped out of Japan for \$21, if
12 that were the price, would cost approximately \$26 arriving
13 in a USA port, and after it arrives in a USA port at a
14 cost of 26, it would have to sell for approximately \$45 for
15 the company to sell it and make a profit.16 So what we do is, we use the thumb rule in
17 order to arrive at a profit of approximately 37 1/2% for
18 gross profit, which means that a telephone selling for
19 \$12.72 in Japan would cost approximately \$5, or \$4.50, or
20 no more than \$5 to arrive in a USA port with freight, duty,
21 insurance, and all other incremental costs. That would
22 bring it to \$17 at a selling price of approximately \$25.50
23 to \$31, so that we arrive at an average of \$27.24 We would then make a profit of 37% gross on the
25 \$27, and this would put us into our 1.2 or 1.3 of the original

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Brown-cross

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selling price from Japan. We would arrive at our 37% operating gross which we would have needed to survive.

Q Mr. Brown, I still am unclear as to what you mean by a "1.2 markup."

A The mathematical figure 1.2 is multiplied times what to reach your wholesale price?

A Okay. 1×12 again makes it 24. 12.72 and 12.72 would make \$25, approximately, 25.50 point a fraction, and the fraction would bring it up to about \$27 or \$28.

Q So by a 1.2 markup, you mean the difference between what you call the price and what your wholesale price is, which is a little bit more than double what you consider your price, is that approximately correct?

A Yes.

Q I show you Government's Exhibits 51 through 55 and ask you if you can tell me what they are.

A These are price lists, wholesale price lists made up for distribution to the different stores in the United States to buy one or two telephones.

Q By whom were they made up?

A By the United States Telephone Company.

Q The item on each exhibit, Mr. Brown, is either suggested retail or suggested minimum retail. Could you tell me if that figure which appears on these lists represents

1 orb

Proc -cross/redirect

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2 the J.C. markup which you have just discussed?

3 A They do not.

4 MISS DAVIS: I have no further questions.

5 MR. RAO: Just one question, Mr. Brown.

6 REDIRECT EXAMINATION

7 BY MR. RAO:

8 Q In response to your answer "They do not,"
9 would you explain why they do not?10 THE COURT: Why don't you have him explain
11 what they do represent?12 MR. RAO: You see, Miss Davis asked him if they
13 represent--

14 THE COURT: Ask him what they do represent.

15 Q What do they represent?

16 A They represent a selling price of approximately
17 5 or 10% of the United States Telephone Company's customers,
18 who are gift stores, who will buy one or two telephones
19 requiring special handling, the result of which makes a net
20 loss and also a high loss, if they they don't have a good
21 credit standing, a high loss of returns in dollars from the
22 amount payable in invoices, with the result that for this
23 minimal amount of shipments, these prices are made up for
24 one-order customers.

25 Secondly, it is designed to give us a negotiating

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Brown-redirect

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composition with the department store we sell to. The department store will see a \$35 wholesale price. We will then allow them \$5 to \$6 per unit for advertising.

We will then allow them for freight paid into their store, with the result that we will get down to about a 27 or \$28 price, which is what we are looking to get, and the \$35 for them represents a point at which they can mark up being even and level with other gift stores in the United States.

If it sold for 59 or \$60, Macy's or such stores would not be embarrassed by too low a selling price.

It is also designed to keep the gift store from selling too low.

Q And do you hand those sometimes to individuals who come in off the street?

A Yes, we do.

Q To purchase a phone?

A Yes.

MR. RAO: I have no further questions.

BY THE COURT:

Q You said that the markup, as a rule of thumb, was 1.2 to 1.5; right?

A Yes.

Q If you made up these lists, what markup would

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Brown-

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1 you use for these lists?

2 A These lists would carry-

3 Q They have to be competitive with 1.2?

4 A Yes; they would be three times, your Honor.
5 They would be 12 x 2.8.

6 Q 2.8 to 3?

7 A Yes, your Honor.

8 THE COURT: All right.

9 MR. RAO: I have no further questions, sir.

10 THE COURT: If you are giving evidence of value,
11 have you given me any kind of a computation?

12 MISS DAVIS: The government, your Honor?

13 THE COURT: No; I am asking Mr. Rao.

14 I am assuming we have totals on your values.

15 MISS DAVIS: Yes, your Honor.

16 THE COURT: All right.

17 MR. RAO: I have no computation like this, your
18 Honor, that can compute the value other than--

19 I withdraw that answer, your Honor. Excuse me.

20 We would have to, your Honor, actually go back
21 into the records themselves. I can show you the actual
22 price of the invoice to the particular purchaser in the
23 United States to show you the true quote, wholesale price,
24 unquote, domestic price.
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Brown

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2 I was attempting to do that through these
3 invoices, your Honor.

4 THE COURT: That doesn't quite do it.

5 MR. RAO: It doesn't do it in so far as
6 multiplication is concerned.

7 THE COURT: It doesn't do it in any event because
8 these invoices are at a time period after the entry was
9 made.

10 MR. RAO: Yes, sir, because the merchandise is
11 sold--

12 THE COURT: The value, the appraised value, is
13 as of the time that the entry is made.

14 MR. RAO: You are right.

15 THE COURT: Not only to the customers which it
16 has, but also for the purposes of penalties, as I understand
17 it.

18 MR. RAO: Yes, sir. Therefore, to talk of '64,
19 we would have to show '63.

20 THE COURT: So we are talking about something
21 that was sold in '63-'69 that has no relevance to the value
22 as of the date of entry.

23 MR. RAO: Correct, but in order for us to show
24 value in '63, we would have to show what was entered prior
25 thereto and sold on that day; correct, your Honor?

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THE COURT: If you can.

MR. RAO: If we can.

THE COURT: Which we haven't introduced.

THE COURT: You haven't done that yet.

MR. RAO: That is correct.

May I consult with Mr. Brown for a second, your Honor?

THE COURT: Yes. We will take a five-minute recess.

(Recess.)

MR. RAO: Will you mark this for identification, please?

(Defendant's Exhibit C marked for identification.)

MR. RAO: Would you mark this for identification, please?

(Defendant's Exhibit D marked for identification.)

REDIRECT EXAMINATION

BY MR. RAO (cont'd):

Q Mr. Brown, during the dates that are represented by the government's charts, did you enter into contracts with the manufacturers in Japan for these items?

A I did.

Q As to the purchase price?

A I did.

1 emb

Brown-redirect

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2 Q And were there times when you received, also,
3 sales confirmations as to the price for the given items of
4 telephones in these government exhibits?

5 A Yes.

6 Q From these manufacturers in Japan?

7 A Yes.

8 MR. RAO: Would you please mark this for
9 identification.

10 (Defendant's Exhibits E and F marked for
11 identification.)

12 Q I show you Defendant's Exhibit E, F and D and C
13 for identification and ask you, are these contracts of sales
14 confirmations you entered into with the manufacturers of
15 these items that are mentioned in the government's exhibits
16 showing the price for the items?

17 A This one is not.

18 Q I'm sorry. Excuse me.

19 Will you look at that, please (handing)?

20 (Pause.)

21 A Yes.

22 MISS: Your Honor, as to the documents that are
23 contained in Defendant's Exhibit F for identification, I
24 object on the grounds of hearsay and lack of foundation.

25 As to E for identification, I have the same

objection: hearsay, lack of a foundation.

As to Defendant's Exhibit D for identification, I have no objection to that document, which is an agreement dated January 10, 1963, if the signature can be attested to by Mr. Brown.

I also have no objection to any of the contents of D if Mr. Brown identifies the signatures on the documents.

As to C for identification, I have no objection as to Exhibit C for identification, Defendant's Exhibit C; as to the documents which I believe are already in evidence, that is, the special Customs invoice forms.

However, I have an objection to the remainder of the documents based upon hearsay.

Q Mr. Brown, all these contracts--were they signed in your presence?

A No.

Q Did you sign these contracts?

A Some of them, yes. I don't know which ones you are referring to.

Q Let's take the exhibits in order. Exhibit C.

A Yes.

Q For the period August 15, 1967.

A That was signed in my presence.

Q Do you recognize this signature?

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Brown

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A Yes.

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Q Did he sign it in your presence?

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A Yes, he did.

5

Q This is the sales confirmation. Do you recognize

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all the signatures?

7

A Yes, I do.

8

MISS DAVIS: Your Honor, I don't consider this
9 laying a foundation for their admission.

10

MR. RAO: I am trying to establish, your Honor,
11 that he can identify the signature of the individual who
12 signed it plus himself; that the contract itself is
13 authenticated; and secondly, we have already established
14 that it relates to the merchandise that relates to the
15 charts.

16

THE COURT: All of the document or portions of
17 it?

18

MR. RAO: All of it; all that goes within that
19 time period.

20

THE COURT: In other words, those four contracts
21 cover all the items covered on the charts.

22

MR. RAO: The four contracts relate to certain
23 telephones. Not every single telephone is within every
24 contract. In other words, one contract might talk about
25 Duchess; another contract might talk about Continental. I

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Brown-redirect

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1 am not saying that the contract he is talking about is
2 covering every single item within those charts. No, I am
3 not saying that. Did I give you that impression, sir?

4 THE COURT: What probative value would it
5 have for me then?

6 MR. RAO: For the purpose of value, your Honor,
7 to show the price that intact Mr. Brown paid for those
8 items there. In other words, your Honor, if I may say this:
9 Just as the wholesale price list, Government's Exhibits 51 to
10 55, I believe are offered for whatever probative value your
11 Honor wants as to--

12 THE COURT: Let me ask you, isn't that already
13 contained in your stipulation, in effect? Don't you agree
14 with the so-called first invoice price unit?

15 MR. RAO: Yes, sir, the first invoice price unit.

16 THE COURT: And isn't that the manufacturers'
17 price per unit?

18 MR. RAO: Yes, sir, that's true, your Honor.

19 THE COURT: So isn't it there already?

20 MR. RAO: You are right. You are right. You
21 are right, your Honor.

22 Your Honor, relative to what you said before the
23 adjournment, we do not have now a list prepared that would
24 show your Honor the actual sale in the United States that
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1 emb

Brown-redirect

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2 would correspond to each and every entry here.

3 As your Honor pointed out, this first unit
4 price is what we are saying is what we paid for it. And
5 by the same token, your Honor--

6 THE COURT: And the markup is computed on that?

7 MR. RAO: Yes, sir.

8 THE COURT: Right?

9 MR. RAO: Yes, sir. That's what Mr. Brown said.

10 And if your Honor wants, or if your Honor will
11 permit, Mr. Brown can try to get out all this correspondence
12 tonight and see if we can get invoices that would relate
13 directly to these charts, and I could supply them to the court;
14 that is, if your Honor wants it.

15 MISS DAVIS: Your Honor, we have known about
16 this trial itself for three months. He has known about this
17 complaint since 1971. It seems to me that there comes a
18 time when you prove your case or you don't.

19 MR. RAO: By the same token, your Honor, if the
20 government has the burden of proving value, and they are
21 going to depend upon the wholesale price sheet, Exhibits 51
22 to 55, and they want to rest on that, I think that they also
23 have that burden, and I think that they haven't established
24 their burden with the wholesale price list as testified to
25 by Mr. Haroian and Mr. Brown.

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2 THE COURT: It is always possible for the
3 court to take into consideration the appraisal that was
4 made by the government and also the testimony of Mr. Brown
5 with respect to the purpose of that price list and what the
6 discount was, and so forth and so on.

7 MR. RAO: Yes, sir.

8 THE COURT: So what I would suggest is that
9 after you have rested--and I assume you are close to that
10 at this point?

11 MR. RAO: Yes, sir.

12 THE COURT: --that you, in effect, in connection
13 with your post-trial memorandum, do the job right.

14 MR. RAO: Yes, sir.

15 THE COURT: All right?

16 MR. RAO: Fine, sir.

17 THE COURT: I am not precluding you from putting
18 in anything else you want, but it is just for the purposes
19 of permitting me to get an idea as to what I am expected to
20 decide.

21 MR. RAO: I understand, your Honor. That's all
22 we have to offer as to value, your Honor.

23 (Witness excused.)

24 THE COURT: Do you have anything else?

25 MISS DAVIS: No, your Honor.

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THE COURT: Both sides rest?

MR. RAO: Yes, sir.

MISS DAVIS: Yes, your Honor.

THE COURT: All right. I am assuming that you have renewed your motions.

MR. RAO: Yes, sir.

THE COURT: And I am assuming that she has made her motion for a judgment in accordance with her charts, and I am reserving on all motions.

MR. RAO: Yes, sir. Did your Honor want to hear anything relative to the statute of limitations. If you do, all I can do is repeat what you already heard.

THE COURT: What I do not understand, and I don't pretend to know about this, but there is a report; is that in evidence anywhere?

MISS DAVIS: No, your Honor, that is not in evidence. The testimony of the government is that we had no knowledge prior to July 26, 1966, our complaint having been filed July 23, 1971. The statute would start on July 23, 1966. We testified that we received a report in New York, in October of '66. We don't rest our case on that. We rest on the fact that there is testimony that there is no knowledge on the part of the government as to any evidence of fraud prior to July 26, 1966.

1
2 MR. RAO: And of course, as your Honor knows,
3 I read in the testimony of Ripa where he said, in the middle
4 of '66, and you also heard the testimony of Mr. Brown, and
5 the statute of limitations, and the entries as to 1964 to 1966,
6 they expired, if the government had knowledge prior to
7 July 23, 1966.

8 MISS DAVIS: Your Honor, I have that point, and
9 I would be more than happy to put it into evidence.

10 THE COURT: Well, you have got Mr. O'Brien here.

11 MISS DAVIS: Yes, I have Mr. O'Brien here.

12 THE COURT: If he can identify it as a report--

13 MISS DAVIS: I would be more than happy to put
14 him on, your Honor, if Mr. Rao does not object.

15 MR. RAO: I haven't seen it. I must have seen it
16 years ago but--

17 MISS DAVIS: I would frankly anticipate--

18 THE COURT: I think the report is the best
19 evidence as to when it was written, assuming it's dated.

20 MR. RAO: It is the best evidence as to when it
21 was written, your Honor, but I don't know if it is the best
22 evidence as to when knowledge was had.

23 THE COURT: It depends on what the report says.

24 MR. RAO: You are right, your Honor.

25 I have no objection to this going in because it

1 enb

2 will help your Honor to determine what it says in here.

3 I have no objection to letting this go in because
4 it can help the court, and that is what we want.

5 MISS DAVIS: Do you have a copy for me?

6 MR. RAO: Yes. Absolutely.

7 THE COURT: I assume Mr. Brown is excused?

8 MR. RAO: Yes, your Honor.

9 (Government's Exhibit 76 for identification
10 received in evidence.)

11 MR. RAO: I have nothing further, your Honor.

12 THE COURT: How long do you want for a memorandum?

13 MISS DAVIS: Four weeks, if your Honor please.

14 MR. RAO: I will have to get my memorandum in
15 as soon as possible, your Honor, because next week is the
16 last week. I won't be here. I will be out of the country,
17 so I am going to have to get it in to you by Friday, but
18 that doesn't mean that she should be pressed for time because
19 of that, your Honor. I am not pressing anybody.

20 THE COURT: Four weeks for the exchange and a
21 week thereafter for reply.

22 MISS DAVIS: Fine. Thank you very much, your
23 Honor.

24 MR. RAO: Would the court permit me to submit
25 my memorandum by the 19th of September? Is that too far?

1
2 THE COURT: That is not too far. That is about
3 four weeks.

4 MR. RAO: I am coming back September 12th, and
5 if the court will permit the 19th of September--

6 THE COURT: Both sides exchange on the 19th of
7 September, and then a week for each to reply. If you feel
8 the need to reply, you can have a week.

9 MR. RAO: Thank you, sir.

10 THE COURT: The court will be in recess. The
11 only exhibit I am retaining is the joint exhibit, the
12 stipulation. I assume that you both--

13 MISS DAVIS: Fine.

14 THE COURT: --will be responsible for your own
15 exhibits.

16 (Trial concluded.)
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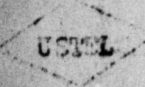
GOVERNMENT'S EXHIBIT 5.

INVOICE

RC- C (9)- 65-00719

Tokyo Japan June 19, 1965.

Invoice of Twelve (12) Cartons of Telephone Continental. to be shipped
per " TEVERIA " from Yokohama to New York. consigned by
GREENHILL KATO & CO., LTD. for account and risk of United States Telephone Co.,
1180 Avenue of the Americas, New York, N.Y.

Identifying Marks & Numbers	Quantity	Description of Goods	Unit Price	Amount
 NANOI NEW YORK C/NO.1-12 MADE IN JAPAN	12 Cartons 72 units.	Telephone Continental Model "NANOI" with substat.	Per unit. \$17.50	\$1,260.00
		Gold..... 27 units. Silver..... 5 units. Brown..... 30 units. Nabecho..... 10 units.		
		Each carton contained as under		
		C/NO.1-4..... 66 units.- 24 units.Gold.		
		C/NO.5-9..... 66 units.- 30 units.Brown.		
		C/NO.10..... 6 units. Brown.		
		C/NO.11..... 5 units.Silver.		
		- 1 unit. Gold.		
		C/NO.12..... 2 units.Gold.		
		- 4 units.Nabecho.		

"Drawn under The Chase Manhattan Bank, New York
L/C D.372851 dated Nov 21, 1945.

GOVERNMENT'S EXHIBIT 5A.

GREENHILL KATO & CO., LTD. TOKYO, JAPAN.

INVOICE

Bank Certificate No.

RC. C (9) - 65 - 00719


Invoice No. 6-5839

To'yo Japan June 19, 1965.

Invoice of Twelve (12) Cartons of Telephono Continental. to be shipped

per AMERICAN from NEW YORK to NEW YORK consigned by AMERICAN

GREENHILL KATO & CO., LTD. for account and risk of United States Telephone Co.,
1180 Avenue of the Americas, New York, N.Y. 10020

Identifying Marks & Numbers	Quantity	Description of Goods	Unit Price	Amount
 MATOI 12M 12M C/12.12-12 MADE IN JAPAN	12 Cartons 72 units.	Telephone Continental Model "MATOI" with subset. Gold..... 27 units. Silver..... 5 units. Brown..... 30 units. Nabecho..... 10 units. Each carton contained as under C/12.1-4..... 33 units.- 24 units. Gold. C/12.5-9..... 33 units.- 30 units. Brown. C/12.10..... 6 units. Nabecho. C/12.11..... 5 units. Silver. C/12."..... 1 unit. Gold. C/12.12..... 2 units. Gold. - 4 units. Nabecho.	Per unit. \$39.50	2,211.00
"Drawn under The Chase Manhattan Bank, New York L/C NO. 372651 dated May 21, 1955.				

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GOVERNMENT'S EXHIBIT 5B.

Attach Additional Sheets Here

Read Carefully Instructions for Preparation of Invoice

(THIS FORM DOES NOT REQUIRE CERTIFICATION BY A UNITED STATES CONSULAR OFFICER)

Form Approved.
Budget Bureau No. 44-8442-2

SPECIAL CUSTOMS INVOICE

BUREAU OF CUSTOMS

(Original only required for customs purposes)

I. THIS SECTION TO BE FILLED IN FOR EVERY SHIPMENT						
1. How were goods obtained by importer? By purchase or agreement to purchase <input type="checkbox"/> By some means other than a purchase <input type="checkbox"/>						
DO NOT INCLUDE PURCHASE AND NONPURCHASE GOODS IN SAME INVOICE. USE SEPARATE INVOICE FOR EACH						
2. Place (city and country) and date obtained by importer Tokyo, Japan. June 19, 1965.		3. Name of exporting carrier "COSUMOVA"		4. Date of shipment		
II. TO BE FILLED IN IF GOODS WERE PURCHASED OR AGREED TO BE PURCHASED				III. TO BE FILLED IN IF GOODS WERE NOT PURCHASED		
1. Name and address of seller Greenhill Radio Co., Ltd. No. 10 1-chome Hayabashi Shimomachi Chuo-ku Tokyo				1. Name and address of person from whom goods were obtained		
2. Name and address of purchaser United States Telephone Co. 1100 Avenue of the Americas, New York, N.Y. 10020				2. Name and address of consignee		
3. Date order accepted				3. Name and address of person for whose account goods are shipped		
IV. THIS SECTION TO BE FILLED IN FOR EVERY SHIPMENT						
(1) MARKS AND NUMBERS ON SHIPPING PACKAGES	(2) MANUFACTURER'S OR SELLER'S NUMBERS OR SYMBOLS	(3) QUANTITY AND FULL DESCRIPTION OF GOODS (State contents of each package and importer's numbers or symbols, if any)	(4) INVOICE UNIT PRICE OR VALUE	(5) INVOICE TOTALS AND SHOW SEPARATELY PACKING COSTS, ALL OTHER COSTS, CHARGES, AND EXPENSES	(6) CURRENT UNIT PRICE AND HOME CONSUMPTION IN U.S. DOLLARS AND CENTS	(7) CURRENT UNIT PRICE AND HOME CONSUMPTION IN U.S. DOLLARS AND CENTS
USTIL JUNIOR NEW YORK C/1011-12 MADE IN JAPAN		Telephone Continental Model "JUNIOR" with sub-set. 12 Cartons 72 units. Gold..... 27 units. Silver..... 5 units. Brown..... 30 units. Habecho..... 10 units. Particulars as per attached sheet.	17.90	1,288.80	17.90	17.90
(Export charge included in this invoice amount.)						
(8) Country of origin Japan.		(9) If rate of exchange is fixed or agreed, give rate 1.00 = 100.00		(10) If discount is freely allowed, give terms, amount, and whether in U.S. dollars		
V. THIS SECTION TO BE FILLED FOR EVERY SHIPMENT						
1. IF GOODS WERE PURCHASED, have you stated in section IV, column 4, the purchase price of each item in the currency in which the goods were bought? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No						
2. IF THE GOODS WERE NOT PURCHASED, have you stated in section IV, column 4, the price that you would have received or would be willing to receive now if the goods were sold in the ordinary course of trade for exportation to the United States? <input type="checkbox"/> Yes <input type="checkbox"/> No						
3. What currency was used in this invoice transaction? U.S. DOLLARS						
4. Whether the goods were purchased or obtained by the United States importer in some other manner, have you stated in section IV, column 6						
(A) (1) The price at which you are now selling the goods or offering them for sale for home consumption, including all applicable taxes? <input type="checkbox"/> Yes <input type="checkbox"/> No						
(2) Is this price freely offered to anyone who wishes to buy the goods for home consumption? <input type="checkbox"/> Yes <input type="checkbox"/> No						
(B) (1) Have you stated in section IV, column 7, the price at which you are now selling the goods or offering them for sale for export to the United States and whether this price is f. o. b., c. i. f., c. & f., or whatever the fact may be? <input type="checkbox"/> Yes <input type="checkbox"/> No						
(2) Is this price freely offered to anyone who wishes to buy the goods for export to the United States? <input type="checkbox"/> Yes <input type="checkbox"/> No						
5. Have you listed all charges and stated whether each amount has been included in or excluded from the invoice amount? <input type="checkbox"/> Yes <input type="checkbox"/> No						
Is the inland freight included in the invoice price or value? <input type="checkbox"/> Yes <input type="checkbox"/> No. Is the price or value of the goods the same at the point of delivery? <input type="checkbox"/> Yes <input type="checkbox"/> No. If the answer is no, have any sales been made at an extraordinary price? <input type="checkbox"/> Yes <input type="checkbox"/> No						
6. Are any rebates, drawbacks, bounties, or other grants allowed upon the exportation of the goods? <input type="checkbox"/> Yes <input type="checkbox"/> No. If yes, have any been separately itemized? <input type="checkbox"/> Yes <input type="checkbox"/> No						
7. If such or similar goods are being sold or offered for sale in the home market for home consumption, what taxes are applicable and are they included in the price shown in section IV, column 4?						
Date _____ Kind _____						

GOVERNMENT'S EXHIBIT 5B

9

PURCHASE DECLARATION

I declare that the merchandise described in this invoice is SOLD
AND TO BE SOLD, that all the information contained
herein is true and correct; and that there is no other invoice(s)
except (explain)

Signature of seller, shipper, or agent (or broker)

(Date)

NONPURCHASE DECLARATION

I declare that the merchandise described in this invoice is shipped
OTHERWISE THAN BY PURCHASE OR AGREEMENT TO
PURCHASE, that all the information contained herein is true and
correct; and that there is no other invoice(s) except (explain)

(Signature of shipper or agent)

(Date)

This form of invoice required generally if rate of duty based upon or regulated by value of goods and purchase price or value of shipment exceeds \$500. Otherwise, use commercial invoice.

False statements or willful omissions in any invoice or other document executed and forwarded for United States Customs entry purposes will subject the goods to seizure and forfeiture or any person involved will be subject to a penalty equal to the value of the goods. Publicity will be given to all seizures and penalties, including the disclosure of the identity of the offenders involved (19 U. S. C. 1592).

Vague or misleading information may result in expensive trouble to importer and delays in customs clearance.

Copies of this form may be secured from consular offices of the United States and from The Director, Customs Information Exchange, 201 Varick Street, New York 14, N. Y. Privately printed forms must conform in all respects to the official form.

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GOVERNMENT'S EXHIBIT 26.

CO., LTD. TOKYO, JAPAN.

INVOICE

No. 4-8268

Bank Certificate No.

RC C (9) - 68-00574.


Tokyo, Japan Apr., 24, 1968

Invoice of One Hundred (100) Cartons of Telephones

to be shipped

per " HONGKONG MARINER " from Yokohama to New York consigned by

GREENHILL KATO & CO., LTD. for account and risk of United States Telephone Co.,
444 Park Avenue South, New York, N.Y.

Identifying Marks & Numbers	Quantity	Description of Goods	Unit Price	Amount
			F.O.B. YOKOHAMA U.S. DOLLARS	
		<u>TELEPHONES</u>	Per unit	
 USTEL	150 units	Duchess.	\$12.80	\$1,920.00
NEW YORK C/NO. 1-100	150 units	Classique.	\$19.49	\$2,923.50
MADE IN JAPAN	50 units	Majesty Antique Gold.	\$18.78	\$ 939.00
TOTAL: 100 Cartons 350 units.		F.O.B. YOKOHAMA :	<u>US\$5,782.50</u>	

We certified that the merchandise is as per
Purchase Order.

Each carton contained as under:-

C/NO. 1-25....25 c/t 66 units - 150 units Duchess.
 C/NO. 26-50...25 c/t 96 units - 150 units Classique.
 C/NO. 51-100..50 c/t 61 unit - 50 units Majesty.

"Drawn under The Chase Manhattan Bank, N.A., New York.
 L/C No. 132852 dated Mar., 20, 1968 and L/C No. 127703
 dated Jan., 31, 1968."

GREENHILL KATO & CO., LTD.

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GOVERNMENT'S EXHIBIT 26A.

INVOICE

Invoice No. 4-0253

Bank Certificate No.

RC-0 (9). 68-00574.

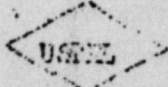
Tokyo, Japan Apr., 24, 1963.

Invoice of One Hundred (100) Cartons of Telephones

to be shipped

per "HONGKONG MARINE" from Yokohama to New York consigned by

GREENHILL KATO & CO., LTD. for account and risk of United States Telephone Co.,
444 Park Avenue South, New York, N.Y.

Identifying Marks & Numbers	Quantity	Description of Goods	Unit Price	Amount
 NEW YORK C/NO. 1-100 MADE IN JAPAN		<u>TELEPHONES</u>	<u>F.O.B. YOKOHAMA</u> <u>U.S. DOLLARS</u>	
	150 units	Duchess.	Per unit C\$21.00	\$3,150.00
	150 units	Classique.	C\$21.00	\$3,150.00
	50 units	Majesty Antique Gold.	C\$50.00	\$2,500.00
TOTAL:	100 Cartons 350 units.		F.O.B. YOKOHAMA :	<u>US\$8,800.00</u>

We certified that the merchandise is as per Purchase Order.

Each carton contained as under:-

C/NO. 1-25.....25 c/t 36 units - 150 units Duchess.
 C/NO. 26-50.....25 c/t 36 units - 150 units Classique.
 C/NO. 51-100...50 c/t 01 unit - 50 units Majesty.

"Drawn under The Chase Manhattan Bank, N.A., New York
 L/O No. 122352 dated Mar., 20, 1963. 31,300.00
 L/O No. 122703 dated Jan., 31, 1963. 32,500.00
63,800.00

GREENHILL KATO & CO., LTD.

T. K. KATO

142a

GOVERNMENT'S EXHIBIT 26B.

DEPARTMENT

Attach Additional Sheet Here

Read Carefully Instructions for Preparation of Invoice


THIS FORM DOES NOT REQUIRE CERTIFICATION BY A UNITED STATES CONSULAR OFFICER

Form Approved
Budget Bureau No. 48 B-113

SPECIAL CUSTOMS INVOICE

BUREAU OF CUSTOMS

(Original only required for customs purposes)

I. THIS SECTION TO BE FILLED IN FOR EVERY SHIPMENT						
1. How were goods obtained by importer? By purchase or agreement to purchase <input checked="" type="checkbox"/> By some means other than a purchase <input type="checkbox"/>						
DO NOT INCLUDE PURCHASE AND NONPURCHASE GOODS IN SAME INVOICE. USE SEPARATE INVOICE FOR EACH						
2. Place (city and country) and date obtained by importer Tokyo, Japan. Apr., 24, 1963.			3. Name of exporting carrier " HONGKONG MARINER "		4. Date of shipment	
II. TO BE FILLED IN IF GOODS WERE PURCHASED OR AGREED TO BE PURCHASED				III. TO BE FILLED IN IF GOODS WERE NOT PURCHASED		
1. Name and address of seller Greenhill Kato & Co., Ltd., 10, 1-chome, Kayabacho, Nishinbashi, Chuo-ku, Tokyo.				1. Name and address of person from whom goods were obtained		
2. Name and address of purchaser United States Telephone Co., 444 Park Avenue South, New York, N.Y.				2. Name and address of consignor		
3. Date order accepted				3. Name and address of person to whose account goods are shipped		
IV. THIS SECTION TO BE FILLED IN FOR EVERY SHIPMENT						
(1) MARKS AND NUMBERS ON SHIPPING PACKAGES	(2) MANUFACTURER'S OR SELLER'S NUMBERS OR SYMBOLS	(3) QUANTITY AND FULL DESCRIPTION OF GOODS (State contents of each package and importer's numbers or symbols, if any)	(4) INVOICE UNIT PRICE OR VALUE	(5) INVOICE TOTALS AND SHOW SEPARATELY PACKING COSTS, ALL OTHER COSTS, CHARGES, AND EXPENSES	(6) CURRENT UNIT PRICE FOR HOME CONSUMPTION IN HOME CURRENCY	(7) CURRENT UNIT PRICE FOR EXPORT TO UNITED STATES
 NEW YORK C/NO. 1-100 MADE IN JAPAN		<u>TELEPHONES</u>		<u>F.O.B. YOKOHAMA</u>		
		Duchess 150 units	@ \$12.80	\$1,920.00	\$4,608.00	\$12.90
		Classique 150 units	@ \$13.49	\$2,023.50	\$7,016.10	\$19.49
		Majesty Antique Gold 50 units	@ \$18.78	\$ 939.00	\$6,760.50	\$18.78
		TOTAL: 100 Cartons 350 units		\$5,782.50		
Particulars as per attached sheet.			(Export charges included in this Invoice amount)			
(8) Country of origin Japan.		(9) If rate of exchange is fixed or agreed, give rate \$1.00 = 360.00		(10) If discount is freely offered, give terms, amount, and whether trade or cash		
V. THIS SECTION TO BE FILLED IN FOR EVERY SHIPMENT						
1. IF GOODS WERE PURCHASED, have you stated in section IV, column 4, the purchase price of each item in the currency in which the goods were bought? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No.						
2. IF THE GOODS WERE NOT PURCHASED, have you stated in section IV, column 4, the price that you would have received or would be willing to receive now if the goods were sold in the ordinary course of trade for exportation to the United States? <input type="checkbox"/> Yes <input type="checkbox"/> No.						
3. What currency was used in this invoice transaction? <u>U.S. Currency</u>						
4. Whether the goods were purchased or obtained by the United States importer in some other manner, have you stated in section IV, column 6:						
(A) (1) The price at which you are now selling the goods or offering them for sale for home consumption, including all applicable taxes?						
<input type="checkbox"/> Yes <input type="checkbox"/> No.						
(2) Is this price freely offered to anyone who wishes to buy the goods for home consumption? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No.						
(B) (1) Have you stated in section IV, column 7, the price at which you are now selling the goods or offering them for sale for export to the United States and whether this price is f.o.b., c.i.f., c&d., or whatever the fact may be? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No.						
(2) Is this price freely offered to anyone who wishes to buy the goods for export to the United States? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No.						
5. Have you listed all charges and stated whether each amount has been included in or excluded from the invoice amount? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No.						
Is the inland freight included in the invoice price or value? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No. Is the price or value of the goods the same at the factory as at the point of delivery? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No. If the answer is No, have any sales been made at an ex-factory price? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No.						
6. Are any rebates, drawbacks, bounties, or other grants allowed upon the exportation of the goods? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No. If so, have all been separately itemized? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No.						
7. If such or similar goods are being sold or offered for sale in the home market for home consumption, what taxes are applicable and are they paid in the price shown in section IV, column 6?						
Date <u>1963</u> and <u>1963</u>						

8. (A) Did production of goods involve costs for "assist" (i.e.—dies, molds, tooling, printing plates, patterns, drawings, blueprints, artwork, engineering work, design and development, financial assistance) *not included* in the invoice price?

(11) (i) Assists valued at were supplied by:
 ("Unknown," if applicable)

☐ Manufacturer ☐ Importer ☐ Other (Identify)

(2) Assists were: ☐ (a) Supplied without cost. ☐ (b) Supplied on rental basis.

☐ (c) Invoiced separately. If (c), attach copy of invoice.

9. If the price(s) shown in column 6 is (are) higher than those shown in column 7, there is an indication of possible sales at less than fair value within the meaning of the United States Antidumping statutes. If this differential exists, please select one of the following alternatives:

(A) ☐ To the best of my knowledge and belief the differential between the column 6 and column 7 prices is the result of conditions of sale which would not result in a price less than fair value within the meaning of the U.S. Antidumping laws.

OR

(B) ☐ There is attached hereto an explanation of the differences between the column 6 and column 7 prices.

NOTE.- In his discretion the appraiser may nonetheless require submission of the information called for under item 9. (B).

10.	PURCHASE DECLARATION	11.	NONPURCHASE DECLARATION
<p>I declare that the merchandise described in this invoice is SOLD OR AGREED TO BE SOLD; that all the information contained herein is true and correct; and that there is no other invoice(s) except</p>		<p>I declare that the merchandise described in this invoice is shipped OTHERWISE THAN BY PURCHASE OR AGREEMENT TO PURCHASE; that all the information contained herein is true and correct; and that there is no other invoice(s) except</p>	
<p>12. Explanation of Exceptions</p>		<p>Explanation of Exceptions</p>	
<p>GREENHILL KATO & CO., LTD.</p> <p>Signature of Seller, Shipper, or Agent of Either</p>		<p>Date</p> <p>Signature of Shipper or Agent</p>	

This form of invoice required generally if rate of duty based upon or regulated by value of goods and purchase price or value of shipment exceeds \$500. Otherwise, use commercial invoice.

False statements or willful omissions in any invoice or other documents executed and forwarded for United States Customs entry purposes will subject the goods to seizure and forfeiture or any person involved will be subject to a penalty equal to the value of the goods. Publicity will be given to all seizures and penalties, including the disclosure of the identity of the offenders involved (19 U.S.C. 1592).

Vague or misleading information may result in expensive trouble to importer and delays in customs clearance.

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GOVERNMENT'S EXHIBIT 32.

KATO & CO., LTD. TOKYO, JAPAN.

INVOICE


Invoice No. 7-2497

Bank Certificate No.

RC- C (9)-68-01043.

Tokyo, Japan July 27, 1968.

Invoice of One Hundred and Seventy Seven (177) Cartons of Telephones to be shipped
 per " UNION EVELYN " from Yokohama to New York consigned by
 GREENHILL KATO & CO., LTD. for account and risk of United States Telephone Company,
 444 Park Avenue South, New York, N.Y., 10016.

Identifying Marks & Numbers	Quantity	Description of Goods	Unit Price	Amount
 NEW YORK C/NO. 1-177 MADE IN JAPAN	346 units	TELEPHONES ✓ Electra Ivory.	Per unit \$312.00	\$10,152.00
	216 units	Electra Satin Gold.	\$313.03	\$ 2,814.48
TOTAL: 177 Cartons		1,062 units.	F.O.B. YOKOHAMA :	\$12,966.48

Each carton contained as under:-
 C/NO. 1-141..... 141 c/t 36 units - 5088 units.
 C/NO. 142-177.... 36 c/t 36 units - 216 units.

"Drawn under The Chase Manhattan Bank, N.A., New York
 L/C No. 135784 dated June 29, 1968."

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GOVERNMENT'S EXHIBIT 32A.

GREENHILL KATO & CO., LTD. TOKYO, JAPAN.

INVOICE


Invoice No. 7-2497

Bank Certificate No.

RC- C(9). 68-01048.

Tokyo, Japan July 27, 1968.

Invoice of One Hundred and Seventy Seven (177) Cartons of Telephones to be shipped
 per " UNION EVILYN " from Yokohama to New York consigned by
GREENHILL KATO & CO., LTD. for account and risk of United States Telephone Company,
444 Park Avenue South, New York, N.Y., 10016.

Identifying Marks & Numbers	Quantity	Description of Goods	Unit Price	Amount
 NEW YORK C/NO. 1-177 MADE IN JAPAN			F.O.B. YOKOHAMA U.S. DOLLAR	
		TELEPHONES		
	846 units	Electra Ivory.	Per unit C\$21.00	\$27,766.00
	216 units	Electra Satin Gold.	C\$21.00	\$ 4,536.00

TOTAL: 177 Cartons 1,062 units F.O.B. YOKOHAMA : US\$22,302.00

Each carton contained as under:-

C/NO. 1-141..... 141 c/t 66 units - 846 units.

C/NO. 142-177... 36 c/t 66 units - 216 units.

"Drawn under The Chase Manhattan Bank, N.A., New York
 L/C No. 136744 dated June 25, 1968."

GREENHILL KATO & CO., LTD.

101

GOVERNMENT'S EXHIBIT 32B.

A.W. 32B

Attach Additional Sheets Here
Read Carefully Instructions for Preparation of Invoice
(THIS FORM DOES NOT REQUIRE CERTIFICATION BY A UNITED STATES CONSULAR OFFICER)

SPECIAL CUSTOMS INVOICE


BUREAU OF CUSTOMS

(Original only required for customs purposes)

I. THIS SECTION TO BE FILLED IN FOR EVERY SHIPMENT

1. How were goods obtained by importer? By purchase or agreement to purchase <input checked="" type="checkbox"/> By some means other than a purchase <input type="checkbox"/>	
2. Place (city and country) and date obtained by importer Tokyo, Japan, July 27, 1968.	
3. Name of exporting carrier " UNION EVELYN "	
4. Date of shipment	
II. TO BE FILLED IN IF GOODS WERE PURCHASED OR AGREED TO BE PURCHASED	
1. Name and address of seller Greenhill Kato & Co., Ltd., 10, 1-chome, Kaya-bacho, Nishinbashi, Chu-ku, Tokyo.	
2. Name and address of purchaser United States Telephone Co., 444 Park Avenue South, New York, N.Y., 10016.	
3. Date order accepted	
III. TO BE FILLED IN IF GOODS WERE NOT PURCHASED	
1. Name and address of person from whom goods were obtained	
2. Name and address of consignee	
3. Name and address of person for whose account goods are being shipped	

IV. THIS SECTION TO BE FILLED IN FOR EVERY SHIPMENT

(1) MARKS AND NUMBERS ON SHIPPING PACKAGES	(2) MANUFACTURER'S OR SELLER'S NUMBERS OR SYMBOLS	(3) QUANTITY AND FULL DESCRIPTION OF GOODS (State contents of each package and importer's numbers or symbols, if any)	(4) INVOICE UNIT PRICE OR VALUE	(5) INVOICE TOTALS AND SHOW SEPARATELY PACKING CHARGES, ALL OTHER CHARGES, AND EXPENSES
 NEW YORK C/NO. 1-177 MADE IN JAPAN		TELEPHONES.		F.O.B. YOKOHAMA
		Electra Ivory 846 units	\$12.00	\$10,152.00
		Electra Satin Gold 216 units	\$13.03	\$2,814.48
		TOTAL: 177 Cartons 1,062 units		US \$12,966.48
Particulars as per attached sheet.			(Export charges included in Invoice amount)	
(6) Country of origin Japan.		(7) If rate of exchange is fixed or agreed, give rate \$1.00 = 360.00	(8) If discount is freely offered, give rate of trade or cash	

V. THIS SECTION TO BE FILLED IN FOR EVERY SHIPMENT

- IF GOODS WERE PURCHASED, have you stated in section IV, column 4, the purchase price of each item in the currency in which bought? ☒ Yes ☐ No.
- IF THE GOODS WERE NOT PURCHASED, have you stated in section IV, column 4, the price that you would have received to receive now if the goods were sold in the ordinary course of trade for exportation to the United States? ☐ Yes ☒ No.
- What currency was used in this invoice transaction? U.S. Currency
- Whether the goods were purchased or obtained by the United States importer in some other manner, have you stated in section IV, column 4, the price at which you are now selling the goods or offering them for sale for home consumption, and whether this price is freely offered to anyone who wishes to buy the goods for home consumption? ☐ Yes ☒ No.
 - Is this price freely offered to anyone who wishes to buy the goods for home consumption? ☒ Yes ☐ No.
- Have you listed all charges and stated whether each amount has been included in or excluded from the invoice price or value? ☒ Yes ☐ No. If the answer is No, have any sales been made at an export price? ☐ Yes ☒ No. If the answer is Yes, have any rebates, drawbacks, bounties, or other grants allowed upon the exportation of the goods? ☐ Yes ☒ No.

Kind

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GOVERNMENT'S EXHIBIT 32B

SECTION V (Continued)

(A) Did production of goods involve costs for "assists" (i.e.—dies, molds, tooling, printing plates, patterns, drawings, blueprints, artwork, engineering work, design and development, financial assistance) *not included* in the invoice price?

☐ Yes ☐ No. If yes, identify nature of assist involved _____, and complete Part 1.

(b) (1) Assists valued at _____ were supplied by:
("Unknown," if applicable)

☐ Manufacturer ☐ Importer ☐ Other (Identify) _____

(2) Assists were: ☐ (a) Supplied without cost. ☐ (b) Supplied on rental basis.

☐ (c) Invoiced separately. If (c), attach copy of invoice.

If the price(s) shown in column 6 is (are) higher than those shown in column 7, there is an indication of possible sales at less than fair value within the meaning of the United States Antidumping statutes. If this differential exists, please select one of the following alternatives:

(A) ☐ To the best of my knowledge and belief the differential between the column 6 and column 7 prices is the result of conditions of sale which would not result in sales at less than fair value within the meaning of the U.S. Antidumping laws.

OR

(B) ☐ There is attached hereto an explanation of the differences between the column 6 and column 7 prices.

NOTE.—In his discretion the appraiser may nonetheless require submission of the information called for under item 9. (B).

PURCHASE DECLARATION	11. NONPURCHASE DECLARATION
I declare that the merchandise described in this invoice is SOLD OR AGREED TO BE SOLD; that all the information contained herein is true and correct; and that there is no other invoice(s) except _____	I declare that the merchandise described in this invoice is shipped OTHERWISE THAN BY PURCHASE OR AGREEMENT TO PURCHASE; that all the information contained herein is true and correct; and that there is no other invoice(s) except _____
Explanation of Exceptions	Explanation of Exceptions
Signature of Seller, Shipper, or Agent of Either	Date
Signature of Shipper or Agent	Signature of Shipper or Agent

This form of invoice required generally if rate of duty based upon or regulated by value of goods and purchase price or value of shipment exceeds \$500. Otherwise, use commercial invoice.

False statements or willful omissions in any invoice or other documents executed and forwarded for United States Customs entry purposes will subject the goods to seizure and forfeiture or any person involved will be subject to a penalty equal to value of the goods. Publicity will be given to all seizures and penalties, including the disclosure of the identity of offenders involved (19 U.S.C. 1592).

Vague or misleading information may result in expensive trouble to importer and delays in customs clearance.

This form may be secured from consular offices of the United States and from The Director, Customs Information Service, New York, N.Y. 10004. Privately printed forms must conform in all respects to the official form.

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GOVERNMENT'S EXHIBIT 40.

KATO & CO., LTD. TOKYO, JAPAN.

INVOICEInvoice No. 1-7214Bank Certificate No. 2124 70
RC-B (9)-67-00011.Tokyo, Japan Jan., 6, 1937.

Invoice of Eighty Four (84) Cartons of Telephones US-4 Model to be shipped
 per "PIONEER MIST" from Yokohama to New York consigned by
GREENHILL KATO & CO., LTD. for account and risk of United States Telephone Company,
444 Park Avenue, South New York, New York.

Identifying Marks & Numbers	Quantity	Description of Goods	Unit Price	Amount
US-4 UNITED STATES TELEPHONE COMPANY NEW YORK SEARS STOCK NUMBER 7546 NEW YORK C/NO. 2334-2417 MADE IN JAPAN	84 Cartons 504 units	<u>TELEPHONES US-4 MODEL</u> White color	Per unit \$5.83	<u>\$2,938.32</u>

F.O.B. YOKOHAMA

Each carton contained as under:-
 C, NO. 2334-2417....84 c/t 6 units - 504 units.

"Drawn under Republic National Bank of New York,
 New York L/C No. A-20509 dated Nov., 21, 1936."

1334

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GOVERNMENT'S EXHIBIT 40

ones US-4 Model
ate color 504 units

Ex-Factory cost:
Export charges :

Packing and casing
Inland Freight
Storage
Insurance Premium Local
Export customs clearance Fee
Hauling and lighterage
Royalty for design
Exporter's commission
Petities

US\$4.73
US\$0.10
US\$0.06
US\$0.04
US\$0.02
US\$0.03
US\$0.05
US\$0.50
US\$0.23
US\$0.02

2,382.92
50.40
30.24
20.16
10.08
19.12
25.00
252.00
141.12
10.08

TOTAL: 84 Cartons 504 units FOB YOKOHAMA : US\$5.83 2,933.32

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GOVERNMENT'S EXHIBIT 40A.

KATO & CO., LTD. TOKYO, JAPAN.

INVOICE

Bank Certificate No.

RC-B (9)-67-00011

Invoice No. 1-7214

15D

Tokyo Japan January 6, 1957.Invoice of Eighty four (84) cartons of telephones US-4 model to be shippedper PIONEER MIST from Yokohama to New York consigned byGREENHILL KATO & CO., LTD. for account and risk of United States Telephone Company444 Park Avenue, South New York, New York

Identifying Marks & Numbers	Quantity	Description of Goods	Unit Price	Amount
<u>US-4</u> <u>UNITED STATES</u> <u>TELEPHONE COMPANY NEW YORK</u> <u>SEALS STOCK NUMBER 7546</u> <u>NEW YORK</u> <u>C/NO. 2334-2417</u> <u>MADE IN JAPAN</u>	<u>84 Cartons</u> <u>504 units</u>	<u>TELEPHONES US-4 MODEL</u> <u>White color</u>	<u>F.O.B. YOKOHAMA</u> <u>Per Unit</u> <u>343.00</u>	<u>24,032.00</u>

Each carton contained as under:-
 C/NO. 2334-2417... 84 c/t 50 units = 504 units.

"Drawn under Republic National Bank of New York,
 New York L/C No. A-20509 dated Nov., 21, 1956."

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GOVERNMENT'S EXHIBIT 40B.

Additional Sheets Here
 Fully Instructions for Preparation of Invoice
 REQUIRE CERTIFICATION BY A UNITED STATES CONSULAR OFFICER)

SPECIAL CUSTOMS INVOICE
BUREAU OF CUSTOMS
 (Original only required for customs purposes)

Form Approved
 Budget Bureau No. 18-R-123

I. THIS SECTION TO BE FILLED IN FOR EVERY SHIPMENT

Obtained by importer? By purchase or agreement to purchase ☒ By some means other than a purchase ☐

NOT INCLUDE PURCHASE AND NONPURCHASE GOODS IN SAME INVOICE. USE SEPARATE INVOICE FOR EACH

1. Name and date obtained by importer: Japan. Jan., 6, 1967.

2. Name of exporting carrier: "PIONEER MIST"

3. Date of shipment: Jan. 10, 1967

III. TO BE FILLED IN IF GOODS WERE NOT PURCHASED

1. Name and address of person from whom goods were obtained: Greenhill Kato & Co., Ltd., Hayabacho, Minonpashi, Chuo-ku, Tokyo.

2. Name and address of consignee: United States Telephone Co., New York, South New York, New York.

3. Name and address of person for whose account goods are shipped:

IV. THIS SECTION TO BE FILLED IN FOR EVERY SHIPMENT

(2) QUANTITY AND FULL DESCRIPTION OF GOODS (State contents of each package and importer's numbers or symbols, if any)	(3) INVOICE UNIT PRICE OR VALUE	(4) INVOICE TOTALS AND SINGLE, & PARTIALLY PAID, C.O.D., C.O.D., C.O.D., AND C.O.D.	(5) CURRENT UNIT PRICE FOR HOME CONSUMPTION IN HOME CURRENCY	(6) CURRENT UNIT PRICE FOR EXPORT TO UNITED STATES
Eighty Four (84) Cartons Telephones US-4 Model White color 504 units Particulars as per attached sheet.	\$5.83	\$2,938.32	\$2,098.80	\$5.83
(Export charges included in this Invoice amount)				
F.O.B. YOKOHAMA				
Particulars as per attached sheet.				
(9) If rate of exchange is fixed or agreed, give rate \$1.00 = 360.-		(10) If discount is freely offered, give terms, amount, and whether trade or cash		

V. THIS SECTION TO BE FILLED IN FOR EVERY SHIPMENT

IF GOODS WERE PURCHASED, have you stated in section IV, column 1, the purchase price of each item in the currency in which the goods were purchased? ☒ Yes ☐ No.

IF GOODS WERE NOT PURCHASED, have you stated in section IV, column 4, the price that you would have received or would be willing to receive now if the goods were sold in the ordinary course of trade for exportation to the United States? ☐ Yes ☐ No.

What currency was used in this invoice transaction? U.S. Currency

IF THE GOODS WERE PURCHASED OR OBTAINED BY THE UNITED STATES IMPORTER IN SOME OTHER MANNER, have you stated in section IV, column 6:

(1) The price at which you are now selling the goods or offering them for sale for home consumption, including all applicable taxes? ☐ Yes ☒ No.

(2) Is this price freely offered to anyone who wishes to buy the goods for home consumption? ☐ Yes ☒ No.

(3) Have you stated in section IV, column 7, the price at which you are now selling the goods or offering them for sale for export to the United States and whether this price is f.o.b., c.i.f., c&d., or whatever the fact may be? ☒ Yes ☐ No.

(4) Is this price freely offered to anyone who wishes to buy the goods for export to the United States? ☒ Yes ☐ No.

Have you listed all charges and stated whether each amount has been included in or excluded from the invoice amount? ☒ Yes ☐ No.

Has inland freight included in the invoice price or value? ☒ Yes ☐ No. Is the price or value of the goods the same at the factory as at the point of delivery? ☐ Yes ☒ No. If the answer is No, have any sales been made at an ex-factory price? ☒ Yes ☐ No.

Have rebates, drawbacks, bounties, or other grants allowed upon the exportation of the goods? ☐ Yes ☐ No. If so, have all been separately stated? ☐ Yes ☐ No.

Are similar goods being sold or offered for sale in the home market for home consumption, what taxes are applicable and are they included in the price shown in section IV, column 6?

GOVERNMENT'S EXHIBIT 40B

SECTION V (Continued)

tion of goods involve costs for "assists" (i.e.—dies, molds, tooling, printing plates, patterns, drawings, blueprints, artwork, engineering and development, financial assistance) *not included* in the invoice price?

☒ No. If yes, identify nature of assist involved _____, and complete Part II.
valued at _____ were supplied by:
(“Unknown,” if applicable)

☐ Supplier ☐ Imposter ☐ Other (Identify) _____
☐ (a) Supplied with or cost. ☐ (b) Supplied on rental basis.
☐ (c) Invoiced separately. If (c), attach copy of invoice.

If column 6 is (are) higher than those shown in column 7, there is an indication of possible sales at less than fair value within the meaning of the United States Antidumping statutes. If this differential exists, please select one of the following alternatives:

On the basis of my knowledge and belief the differential between the column 6 and column 7 prices is the result of conditions of sale which would not result in sales at less than fair value within the meaning of the U.S. Antidumping laws.

OR

There is attached hereto an explanation of the differences between the column 6 and column 7 prices.

Notwithstanding the aforesaid, the customs authorities may nonetheless require submission of the information called for under item 9, (B).

PURCHASE DECLARATION

11.

NONPURCHASE DECLARATION

I declare that the merchandise described in this invoice is SOLD
and that all the information contained
herein is true and correct; and that there is no other invoice(s)

I declare that the merchandise described in this invoice is
shipped OTHERWISE THAN BY PURCHASE OR AGREEMENT TO PURCHASE; that all the information contained
herein is true and correct; and that there is no other invoice(s)
except

Exceptions

Explanation of Exceptions

GREENHILL KATO & CO., LTD.

Signature of Shipper, or Agent or Broker

Date

Signature of Shipper or Agent

This form of invoice required generally if rate of duty based upon or regulated by value of goods and purchase price or value of shipment exceeds \$500. Otherwise, use commercial invoice.

Any statement or willful misstatement in any invoice or other documents executed and forwarded for United States Customs entry purposes will subject the declarant to seizure and forfeiture and any person involved will be subject to a penalty equal to the value of the goods. Publicity will be given to all seizures and penalties, including the disclosure of the identity of the person involved.

Notwithstanding the aforesaid, the customs authorities may nonetheless require submission of the information called for under item 9, (B).

This form of invoice may be used for merchandise imported from the United States and from the United States Customs Information Exchange, and for merchandise imported from the United States Customs Information Exchange.

GOVERNMENT'S EXHIBIT 40C.

Attach Additional Sheets Here

Read Carefully Instructions for Preparation of Invoice

THIS FORM DOES NOT REQUIRE CERTIFICATION BY A UNITED STATES CONSULAR OFFICER

8.440 C

Form Approved.

Budget Bureau No. 48-1112-1

SPECIAL CUSTOMS INVOICE

BUREAU OF CUSTOMS

(Original only required for customs purposes)

I. THIS SECTION TO BE FILLED IN FOR EVERY SHIPMENT						
1. How were goods obtained by importer? By purchase or agreement to purchase <input type="checkbox"/> By some means other than a purchase <input type="checkbox"/>						
DO NOT INCLUDE PURCHASE AND NONPURCHASE GOODS IN SAME INVOICE. USE SEPARATE INVOICE FOR EACH						
2. Place (city and country) and date obtained by importer Tokyo, Japan. Jan., 6, 1967.		3. Name of exporting carrier PIONEER MIST		4. Date of shipment Jan 10 1967		
II. TO BE FILLED IN IF GOODS WERE PURCHASED OR AGREED TO BE PURCHASED				III. TO BE FILLED IN IF GOODS WERE NOT PURCHASED		
1. Name and address of seller Greenhill Radio & Co., Ltd., 10, 1-chome, Kayabacho, Nishikojima, Chuo-ku, Tokyo.				1. Name and address of person from whom goods were obtained		
2. Name and address of purchaser United States Telephone Company, 244 Park Avenue, South New York, New York.				2. Name and address of consignee		
3. Date order accepted				3. Name and address of person for whose account goods are shipped		
IV. THIS SECTION TO BE FILLED IN FOR EVERY SHIPMENT						
(1) UNIT NUMBER OR SYMBOLS	(2) MANUFACTURER'S OR SELLER'S NUMBER OR SYMBOLS	(3) QUANTITY AND FULL DESCRIPTION OF GOODS (State contents of each package and importer's numbers or symbols, if any)	(4) INVOICE UNIT PRICE OR VALUE	(5) INVOICE TOTALS AND SHOW SEPARATELY PACKING CHARGES, ALL OTHER COSTS, CHARGES, AND EXPENSES	(6) CURRENT UNIT PRICE FOR HOME CONSUMPTION IN HOME CURRENCY	(7) CURRENT UNIT PRICE FOR EXPORT TO UNITED STATES
US-4 UNITED STATES TELEPHONE COMPANY NEW YORK SERIES STOCK NUMBER 7546 NEW YORK CAYO. 2334-2A17 MADE IN JAPAN		Eighty Four (84) Cartons of Telephones US-4 Model. White color 504 units Particulars as per attached sheet.	C\$8.00	\$4,032.00	\$2,880.00	C\$8.00
			(Export charges included in this Invoice amount)			
8. Country of origin Japan.		(9) If rate of exchange is fixed, give rate 1.00		(10) If discount is freely offered, give terms, amount, and whether trade or cash		

V. THIS SECTION TO BE FILLED IN FOR EVERY SHIPMENT

- IF GOODS WERE PURCHASED, have you stated in section IV, column 4, the purchase price of each item in the currency in which the goods were bought? ☒ Yes ☐ No.
- IF THE GOODS WERE NOT PURCHASED, have you stated in section IV, column 4, the price that you would have received or would be willing to receive now if the goods were sold in the ordinary course of trade for exportation to the United States? ☐ Yes ☐ No.
- What currency was used in this invoice transaction? U.S. CURRENCY
- Whether the goods were purchased or obtained by the United States importer in some other manner, have you stated in section IV, column 6:
- (A) (1) The price at which you are now selling the goods or offering them for sale for home consumption, including all applicable taxes? ☐ Yes ☒ No.
- (2) Is this price freely offered to anyone who wishes to buy the goods for home consumption? ☐ Yes ☒ No.
- (1) Have you stated in section IV, column 7, the price at which you are now selling the goods or offering them for sale for export to the United States and whether this price is f.o.b., c.i.f., c.&f., or whatever the fact may be? ☒ Yes ☐ No.
- (2) Is this price freely offered to anyone who wishes to buy the goods for export to the United States? ☒ Yes ☐ No.
- Have you listed all charges and stated whether each amount has been included in or excluded from the invoice amount? ☒ Yes ☐ No.
- Is the inland freight included in the invoice price or value? ☒ Yes ☐ No. Is the price or value of the goods the same at the factory as at the point of delivery? ☐ Yes ☒ No. If the answer is No, have any sales been made at an ex factory price? ☒ Yes ☐ No.
- Are any rebates, drawbacks, bounties, or other grants allowed upon the exportation of the goods? ☐ Yes ☐ No. If so, have all been separately itemized? ☐ Yes ☐ No.
- With or similar goods are being sold or offered for sale in the home market for home consumption, what taxes are applicable and are they included in the price shown in section IV, column 6?

8. (A) Did production of goods involve costs for "assistants" (i.e.—dies, molds, tooling, printing plates, patterns, drawings, blueprints, artwork, engineering work, design and development, financial assistance) *not included* in the invoice price?

☐ Yes ☒ No. If yes, identify nature of assist involved _____, and complete Part 16

(B) (1) Assists valued at were supplied by:

☐ Manufacturer ☐ Importer ☐ Other (Identify)

(2) Assistants were: ☐ (a) Supplied without cost. ☐ (b) Supplied on rental basis.

☐ (c) Invoiced separately. If (c), attach copy of invoice.

9. If the price(s) shown in column 6 is (are) higher than those shown in column 7, there is an indication of possible sales at less than fair value within the meaning of the United States Antidumping statutes. If this differential exists, please select one of the following alternatives:

(A) ☐ To the best of my knowledge and belief the differential between the column 6 and column 7 prices is the result of conditions of sale which would not result in sales at less than fair value within the meaning of the U.S. Antidumping laws.

OR

(B) ☐ There is attached hereto an explanation of the differences between the column 6 and column 7 prices.

NOTE.—In his discretion the appraiser may nonetheless require submission of the information called for under item 9. (B).

10.	PURCHASE DECLARATION	11.	NONPURCHASE DECLARATION
<p>I declare that the merchandise described in this invoice is SOLD OR AGREED TO BE SOLD; that all the information contained herein is true and correct; and that there is no other invoice(s) except</p>		<p>I declare that the merchandise described in this invoice is shipped OTHERWISE THAN BY PURCHASE OR AGREEMENT TO PURCHASE; that all the information contained herein is true and correct; and that there is no other invoice(s) except</p>	
<p>Explanation of Exceptions</p>		<p>Explanation of Exceptions</p>	
<p>GREENHILL KATO & CO., LTD.</p>			
<p>Date</p> <p>1-1-61</p>	<p>Signature of Seller, Shipper, or Agent of Either</p> <p><i>[Signature]</i></p> <p>DIRECTOR</p>	<p>Date</p>	<p>Signature of Shipper or Agent</p>

This form of invoice required generally if rate of duty based upon or regulated by value of goods and purchase price of value of shipment exceeds \$500. Otherwise, use commercial invoice.

False statements or willful omissions in any invoice or other documents executed and forwarded for United States Customs entry purposes will subject the goods to seizure and forfeiture or any person involved will be subject to a penalty equal to the value of the goods. Publicity will be given to all seizures and penalties, including the disclosure of the identity of offenders involved (19 U.S.C. 1592).

Vague or misleading information may result in expensive trouble to importer and delays in customs clearance.

Supplies of any form may be secured from consular offices of the United States and from The Director, Customs Information Exchange, 270 Park Street, New York, N.Y. 10011. Privately printed forms must conform in all respects to the official form.

GOVERNMENT'S EXHIBIT 51.

*United States & Foreign Company*PRICE LIST
Effective -- March 1, 1966

ITEM	PRICE	SUGGESTED RETAIL PRICE	WHOLESALE PRICE TO DEALER
JO 9	Black	59.95	35.00
CONTINENTAL	Ivory	59.95	35.00
	Gold	69.95	37.50
BUCCISS	Ivory	69.95	37.50
REINICI--without dial	Gold	57.95	19.00
REINICI--with dial	Gold	54.95	27.00
THE ZEN GROUP	See Catalog	89.95	43.00
HAVESTY	Gold Bronze Antique Gold Antique Silver	250.00	125.00
MANDARIN	Resonance & Ivory	179.95	90.00
CHROMATA 1	Gold Bronze	174.95	87.50
CHROMATA 2	Gold Bronze	199.95	100.00
MANDALON 1	Gold Bronze	174.95	87.50
MANDALON 2	Gold Bronze	199.95	100.00
HERBACE EARLY AMERICAN NATOL	Antique Bronze Antique Gold Antique Silver	179.95	90.00

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GOVERNMENT'S EXHIBIT 52.

United States Telephone Company

EXECUTIVE OFFICES
444 PARK AVENUE SOUTH
NEW YORK, NEW YORK 10016

WHOLESALE PRICE LIST
Effective April 21, 1967

TELEPHONE: 212-689-4205
CABLE: USTELEDEN - NEW YORK

GROUP I - Promotional Decorator Phones
Packing - 6 per Case (50%) - Assortment Permitted

MODEL	FINISH	SUGGESTED PRICE
French Cradle)	Black	\$ 39.95
Continental)	Ivory	69.95
Decorator Phone)	Gold	74.95
DUCHESS	Ivory	74.95
SEVILLE	GOLD	69.95
REGENCY - Without Dial	Gold	39.95
REGENCY - WITH DIAL	Gold	54.95

GROUP II - DeLuxe Decorator Phones

MAJESTY (Select Choice)	Antique Gold Burnished Gold Antique Silver	250.00	125.00
CLASSIQUE (Continental DeLuxe)	Burnished Gold Lacwork	125.00	62.50
THE ZEN GROUP	As Per Catalogue (Leather Discontinued)	84.95	42.48
EMPEROR	Resonated & Carved Ivory	159.95	79.98
CONTINENTAL (Early American)	Custom Wood	159.95	79.98
EMORY - Heritage (Select Choice)	Gold, Silver or Brown	159.95	79.98
CINCINNATI I	Gold Bronze	174.95	87.48
CINCINNATI II	GOLD BRONZE	199.95	99.98
NAPOLEON I	GOLD BRONZE	174.95	87.48
NAPOLEON II	GOLD BRONZE	199.95	99.98

Terms: Net - 10 Days for well-rated accounts only - F.O.B. Warehouse, New York City

Check must accompany small orders

Note: All orders of single units--add \$5.00 for handling. For example, the Continental Ivory which costs you \$35.50 when ordered in case quantity, would cost you \$40.50 if ordered singly.

GOVERNMENT'S EXHIBIT 53.

United States Telephone Company

PRICE LIST
EFFECTIVE AUGUST 1, 1966
GROUP I - GIFT CARTONS - 6 PER CASE (ASSORTMENT PERMITTED)
GROUP I

MODEL	FINISH	SUGGESTED RETAIL	WHOLESALE PRICE 12 MONTHS
33-0	Black	69.95	35.00
CONFIDENTIAL	Ivory	69.95	35.00
CONFIDENTIAL	Gold	74.95	37.00
33-000	Ivory	74.95	37.00
33-000	Gold	74.95	37.00
33-000X-without dial	Gold	59.95	27.00
33-000X-with dial	Gold	57.95	25.00
THE ZEN GROUP	Shipped as a group in assorted colors	89.95	45.00

GROUP II

MAJESTY	Antique Gold Burnished Gold Antique Silver	250.00	125.00
CLASSIQUE (CONFIDENTIAL DE LUXE)	Burnished Gold Lacquer	125.00	60.00
EMERALD	Recessed and Carved Ivory	179.95	85.00
ORIONATA I	Gold Bronze	174.95	87.00
ORIONATA II	Gold Bronze	199.95	100.00
ORIONATA III	Gold Bronze	174.95	87.00
ORIONATA IV	Gold Bronze	199.95	100.00
ORIONATA V	Gold Silver Bronze	179.95	90.00
ORIONATA VI	Custom Wood	179.95	90.00

Turns: Not too days - - -P.O.D. Warehouse, New York City

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GOVERNMENT'S EXHIBIT 54.

United States Telephone Company

EXECUTIVE OFFICES
444 PARK AVENUE SOUTH
NEW YORK, NEW YORK 10016



TELEPHONE: 212-689-4885
CABLE: USTELEDEN - NEW YORK

PRICE LIST - 1972
PLUG-IN, READY-TO-GO DESIGNER TELEPHONES
(ILLUSTRATED ON REVERSE SIDE, PER MODEL NAMES)

<u>MODEL</u>	<u>DESCRIPTION</u>	<u>COST PER PHONE</u>	<u>SUGGESTED RETAIL</u>
COQUETTE	French Provincial Ivory	\$40.00	\$80.00
	Wildcat, Wetlook	42.50	85.00
ELECTRA	French Provincial Ivory	51.00	99.00
	Wildcat, Wetlook, Wildflower	51.00	99.00
JO-8 CONTINENTAL	Black with Gold Trim	45.00	90.00
	French Provincial Ivory	45.00	90.00
	Gold with Black Trim	50.00	100.00
DUCHESS	French Provincial Ivory	49.00	99.00

DELUXE CONTINENTAL DESIGNER TELEPHONES

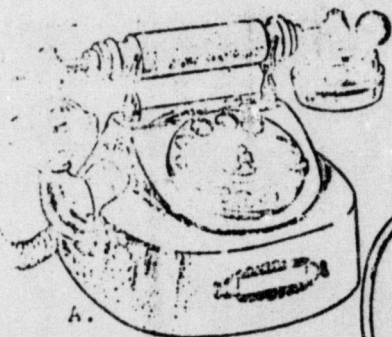
COQUETTE IHAG	Imperial Handcrafted Antique Gold	60.00	120.00
ELECTRA IHAG	Imperial Handcrafted Antique Gold	65.00	129.99
IMPERIAL IHAG	Imperial Handcrafted Antique Gold	65.00	129.99
IMPERIAL CLASSIQUE	Same as IMPERIAL IHAG, but has GOLD HANDSET	78.00	149.99
MAJESTY	Gold - Four Feet High	130.00	250.00

TERMS: Net 30 Days, F. O. B. Our Warehouse

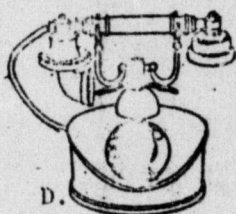
NOTE: Orders for 1 unit, please add \$2.50 special handling charge.

PACKING: Six Telephones per case, 50 lbs.: Assortment permitted.

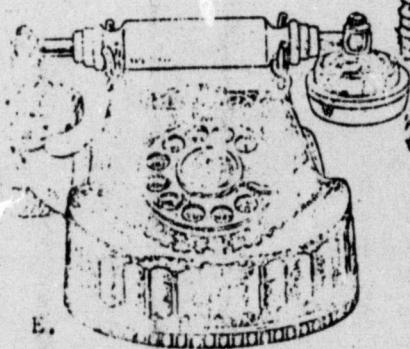
GOVERNMENT'S EXHIBIT 54

COMPLETE, READY-TO-USE, PLUG-IN TELEPHONES

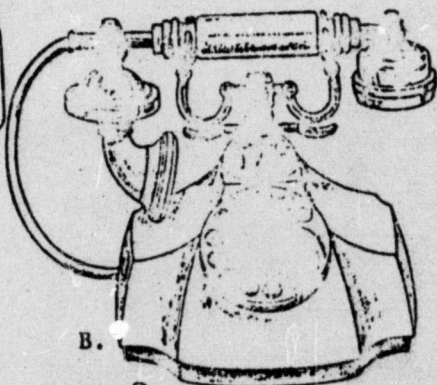
A.



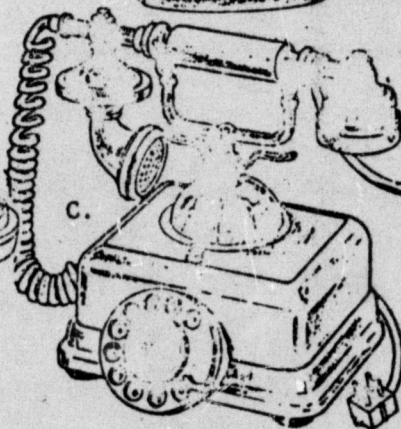
D.



E.



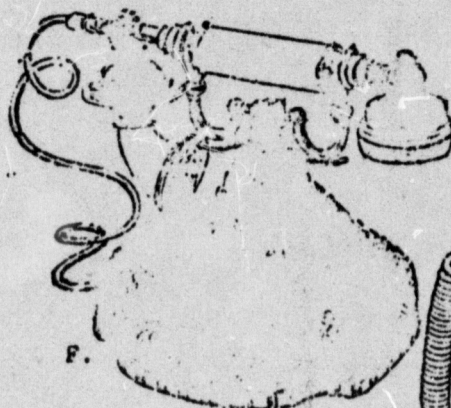
B.



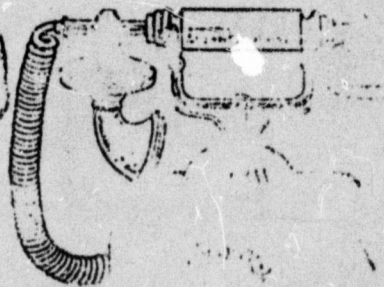
C.



H.



F.



G.

- A. COQUETTE
- B. ELECTRA
- C. JO-8 CONTINENTAL
- D. DUCHESS
- E. COQUETTE IHAG
- F. ELECTRA IHAG
- G. IMPERIAL IHAG*
- H. MAJESTY

*The IMPERIAL CLASSIQUE is the same as the IMPERIAL IHAG (G), but has a gold handset.

GOVERNMENT'S EXHIBIT 55.

United States Telephone Company

EXECUTIVE OFFICES
444 PARK AVENUE SOUTH
NEW YORK, NEW YORK 10016



TELEPHONE 212 889-4885
CABLE USTELEDEII - NEW YORK

PRICE LIST - 1972
BELL SYSTEM APPROVED TELEPHONE HOUSINGS
(Illustrated on Reverse Side, by Name Given Below)

<u>MODEL</u>	<u>NAME</u>	<u>DESCRIPTION</u>	<u>COST PER PHONE</u>	<u>SUGGESTED RETAIL</u>
US-4W	CONTINENTAL.....	White.....	20.00.....	39.99
US-4B	"	Black.....	20.00.....	39.99
US-4G	"	Gold.....	23.00.....	50.00
US-5W	Contessa.....	White.....	24.00.....	49.99
US-5AG	"	IHAG - Imperial Handcrafted Antique Gold.....	32.50.....	59.99
		"MOD" Styles (see over).....	25.00.....	34.99
US-7	EARLY AMERICAN....	Maplewood Color.....	33.00.....	64.99
US-8AG	ELEGANTE IHAG....	IMPERIAL HANDCRAFTED..... Antique Gold	36.00.....	69.99
US-9	FLORENTINE.....	Bronzed Three-Tier Table.....	42.00.....	85.00
US-10	FLEUR DE LIS.....	White with Satin Gold Fleur de Lis Cradle & Gright Gold Trim..	22.00.....	45.00
US-11	JET SET.....	White with Gold Trim.....	20.00.....	39.99
US-6	CAMEO.....	ALOHA Silhouette, white with decorated gold band around base	22.50.....	45.00
WE-500	TELEPHONE COVER	Antiqued Gold Color.....	7.20.....	12.95

---Terms: Net 30 Days, F. O. B. our Warehouse.

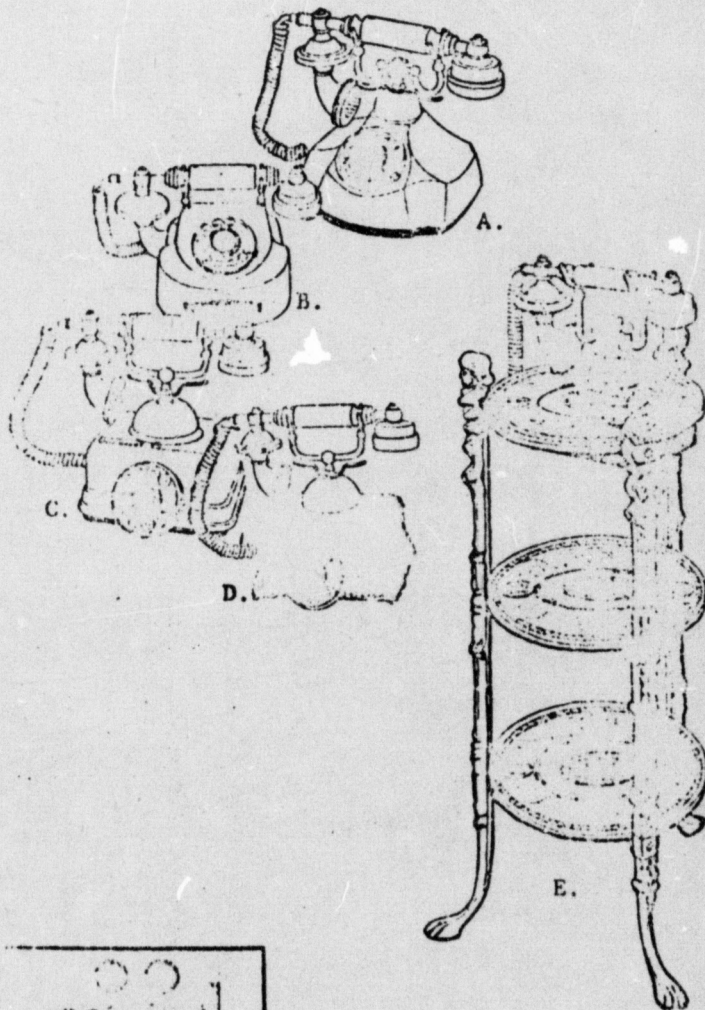
---Note: On orders for one unit, please add \$2.50 for special handling.

---Packing: Six phones per carton, assortment permitted.

US-6W	ALOHA.....	White.....	16.50.....	29.99
		IHAG- Imperial Handcrafted Antique Gold.....	32.50.....	59.99
		"MOD" Styles (see over).....	17.50.....	34.99

GOVERNMENT'S EXHIBIT 55

DESIGNER TELEPHONE HOUSINGS



- A.--CONTESSA
 B.--ALOHA
 C.--CONTINENTAL
 D.--ELEGANTE IHAG--IHAG means
 "Imperial Handcrafted
 Antique Gold." This finish
 also comes as the ALOHA IHAG
 and the CONTESSA IHAG.
 E.--FLORENTINE 3-TIER TABLE.
 F.--EARLY AMERICAN
 G.--FLEUR-DE-LIS
 H.--JET SET
 I.--CAMEO

HOUSINGS must be installed by
 the customer's telephone company,
 which charges a fee for the
 installation plus low monthly
 rates.

The TELEPHONE COVERS on this
 price list fit snugly on the
 handset and body of an ordinary
 black telephone--and convert it
 into a decorative object.

The new MOD ASSORTMENT is not
 illustrated. These designs
 come in the CONTESSA and
 ALOHA Telephones: ZEBRA (black
 and white striped cat), PEACE
 (stylized floral), HARVEST (leaves
 of Autumn), WETLOOK (deep crim-
 son), SEAFROTH (greens, grey
 and black in a swirl design).

* * *

For complete details on any
 of these DESIGNER TELEPHONE
 HOUSINGS, please inquire.

Quantity prices on request.

* * *

The CAMEO (I., left)
 is a new Telephone
 It is the ALOHA
 silhouette with a
 beautiful design in
 gold lined base.

GOV'T
EX. *

ENTRY DATE	ENTRY No.	LETTER OF CREDIT # AND BANK	MODEL AND No. OF UNITS	FIRST INVOICE PRICE/UNIT	SECOND INVOICE PRICE/UNIT	U.S. WHOLESALE PRICE	TOTAL DOMESTIC VALUE
1. OCT. 28, 1964	836373	*32493 BANK OF AMERICA	MAJESTY 25 NAPOLEON I 47 NAPOLEON II 6 CLEOPATRA 40 MANDARIN 7	\$ 19.50 17.65 17.95 16.85 20.40	\$ 54.50 41.50 44.50 41.50 40.50	\$ 125.00 87.50 100.00 87.50 90.00	\$11,967.50
2. JAN. 25, 1965	82400	*32493 BANK OF AMERICA	JO 8 99 CLEOPATRA I 35 CLEOPATRA II 59	15.54 16.85 17.15	24.50 41.50 44.50	35.50 87.50 100.00	12,477.00
3. FEB. 9, 1965	82343	*32493 BANK OF AMERICA	MAJESTY GOLD 30 MAJESTY SILVER 89 MAJESTY ANTIQUE 7	19.50 19.50 19.50	— 54.50 54.50	125.00 125.00 125.00	15,750.00
4. MAY 16, 1965	1058923	*32493 BANK OF AMERICA	DUCHESS 500	13.52	19.50	37.50	18,750.00
5. JULY 28, 1965	724394	*372651 CHASE MAN. BANK	MATOI 72	17.90	39.50	79.95	5,756.40
6. AUG. 19, 1965	4193	*372651 CHASE MAN. BANK	IVORY 460 BLACK 266 IVORY 698 IVORY 504	12.72 12.72 12.72 12.72	19.50 19.50 19.50 19.50	35.50 35.50 35.50 35.50	68,444.00
7. OCT. 29, 1965	842463	*373101 CHASE MAN. BANK	COLONIAL 148 ANTIMONY 24 DUCHESS 100	19.50 20.21 13.52	31.38 20.21 14.02	79.95 37.50 37.50	16,482.60
8. DEC. 11, 1965	15601	*373101 CHASE MAN. BANK	MATOI 48 CONTINENTAL 22	17.90 12.72	28.99 17.00	79.95 35.50	4,681.60
9. JAN. 12, 1966	17510	*373101 CHASE MAN. BANK	CONTINENTAL IVORY 550 CONTINENTAL BLACK 100 CONTINENTAL GOLD 200 DUCHESS 200	12.72 12.72 13.78 13.52	16.15 16.15 17.15 14.02	35.50 35.50 37.50 37.50	38,075.00
10. JAN. 26, 1966	951642	*373101 CHASE MAN. BANK	MAJESTY ANTIQUE 20 MAJESTY GOLD 6	19.50 19.50	40.33 39.74	125.00 125.00	3,250.00
11. FEB. 14, 1966	20323	*385498 CHASE MAN. BANK	ANTIMONY 100 DUCHESS 498 CONTINENTAL IVORY 802 CONTINENTAL BLACK 198 CONTINENTAL GOLD 248	20.21 13.52 12.72 12.72 13.78	25.00 21.00 21.00 21.00 21.00	37.50 37.50 35.50 35.50 35.50	66,729.00

GOVERNMENT'S EXHIBIT 70.

162a

GOVT. EX.	ENTRY DATE	ENTRY No.	LETTER OF CREDIT # AND BANK	MODEL AND No. OF UNITS	FIRST INVOICE PRICE/UNIT	SECOND INVOICE PRICE/UNIT	U.S. WHOLESALE PRICE	TOTAL DOMESTIC VALUE
12.	MAR. 14, 1966	22588	*386057 CHASE MAN. BANK	CONTINENTAL IVORY 1348 CONTINENTAL BLACK 200 CONTINENTAL GOLD 402 DUCHESS 500	*12.72 12.72 13.78 13.52	*21.00 21.00 21.00 21.00	*35.50 35.50 37.50 37.50	\$ 90,554.00
13.	MAR. 24, 1966	23294	*385769 CHASE MAN. BANK	MAJESTY ANTIQUE 67 MAJESTY GOLD 31	19.50 19.50	51.00 51.00	125.00 125.00	12,250.00
14.	MAR. 24, 1966	23295	*386057 CHASE MAN. BANK	CONTINENTAL IVORY 582 CONTINENTAL BLACK 80 CONTINENTAL GOLD 160 DUCHESS 200	12.72 12.72 13.78 13.52	21.00 21.00 21.00 21.00	35.50 35.50 37.50 37.50	37,001.00
15.	APR. 23, 1966	25910	*389305 CHASE MAN. BANK	CONTINENTAL IVORY 1122 CONTINENTAL BLACK 165 CONTINENTAL GOLD 328 DUCHESS 408 ANTIMONY 300	12.72 12.72 13.78 13.52 20.21	21.00 21.00 21.00 21.00 25.00	35.50 35.50 37.50 37.50 37.50	84,538.50
16.	JAN. 12, 1967	936732	*23959 MERCHANTS N. Y.	DUCHESS 250 J8-4 GOLD 250 J8-4 IVORY 500 J8-4 BLACK 250 CLASSIQUE ANTIMONY 100 MAJESTY SILVER 15 MAJESTY ANTIQUE 15	19,183.88	22,112.33	37.50 37.50 35.50 35.50 60.00 125.00 125.00	52,625.00
17.	JAN. 24, 1967	959402	*23956 MERCHANTS N.Y.	MATOI 42	751.80	1,217.58	79.95	3,357.90
18.	MAR. 6, 1967	998095	*108944 CHASE MAN. BANK	SEVILLE 702 JO 8 GOLD 234 DUCHESS 198	15.10 13.78 13.52	17.00 21.00 20.00	35.50 37.50 37.50	41,121.00
19.	MAR. 13, 1967	1003892	*108944 CHASE MAN.	JO 8 IVORY 300	12.72	20.00	35.50	10,650.00
20.	JULY 29, 1967	66302	*108944 CHASE MAN. BANK	JO 8 IVORY 500 JO 8 BLACK 100 CLASSIQUE 100 JO 8 GOLD 200 DUCHESS 200 GOLD L'ANTIQUE 100	12.72 12.72 20.21 13.78 13.52 18.40	20.00 20.00 21.00 21.00 20.00 21.00	35.50 35.50 60.00 37.50 37.50 37.50	46,050.00
21.	NOV. 7, 1967	853402	*200161 MANUF. HAN. TRUST	MAJESTY GOLD 20 MAJESTY ANTIQUE 20	18.78 18.78	19.50 19.50	125.00 125.00	5,000.00

GOVERNMENT'S EXHIBIT 71.

163a

GOVT EX -	ENTRY DATE	ENTRY No.	LETTER OF CREDIT # AND BANK	MODEL AND No. OF UNITS	FIRST INVOICE PRICE/UNIT	SECOND INVOICE PRICE/UNIT	U.S. WHOLESALE PRICE	TOTAL DOMESTIC VALUE
22.	NOV. 10, 1967	856096	*200161 MANUF. HAN. TRUST	MAJESTY GOLD 22 MAJESTY ANTIQUE 28 MAJESTY SILVER 1	*18.78 18.78 18.78	*19.50 19.50 19.50	*125.00 125.00 125.00	\$ 6,375.00
23.	FEB. 21, 1968	981376	*128508 CHASE MAN. BANK	ANTIMONY 72 GOLD 102 DUCHESS 306 SEVILLE 204 MAJESTY GOLD 34	19.49 13.03 12.80 17.46 18.78	21.00 21.00 21.00 21.00 50.00	60.00 37.50 37.50 35.50 125.00	31,112.00
24.	APR. 18, 1968	1054480	*128508 CHASE MAN.	CONTESSA 1500	6.25	7.00	24.00	36,000.00
25.	MAY 22, 1968	1094282	*132852 CHASE MAN. BANK	JO 8 IVORY 500 JO 8 BLACK 100 JO 8 GOLD 200 SEVILLE 300	12.00 12.00 13.03 17.46	21.00 21.00 21.00 21.00	35.50 35.50 37.50 35.50	39,450.00
26.	JUNE 4, 1968	1108107	*132852 AND *129708 CHASE MAN.	DUCHESS 150 CLASSIQUE 150 MAJESTY ANTIQUE 50	12.80 19.49 18.78	21.00 21.00 50.00	37.50 60.00 125.00	20,875.00
27.	JULY 8, 1968	710143	*132852 CHASE MAN. BANK	CONTESSA GOLD 500 MAJESTY GOLD 50	6.25 18.78	6.25 50.00	32.50 125.00	22,500.00
28.	JULY 27, 1968	730390	*132852 AND *129708 CHASE MAN.	DUCHESS 300 MAJESTY GOLD 50	12.80 18.78	21.00 50.00	37.50 125.00	17,500.00
29.	AUG. 1, 1968	747262	*137178 CHASE MAN.	CLASSIQUE 194	20.21	21.00	60.00	11,640.00
30.	AUG. 22, 1968	765410	*138744 CHASE MAN. BANK	CONTESSA WHITE 3200 CONTESSA BEIGE 500 CONTESSA GOLD 500	6.313 6.313 7.918	6.35 6.35 8.00	24.00 24.00 32.50	105,050.00
31.	AUG. 22, 1968	765411	*137178 CHASE MAN. BANK	ELECTRA GOLD 200 ELECTRA IVORY 220 MAJESTY GOLD 50	13.03 12.00 18.78	21.00 21.00 50.00	21.00 21.00 125.00	15,070.00
32.	SEPT. 8, 1968	782341	*138744 CHASE MAN. BANK	ELECTRA IVORY 846 ELECTRA GOLD 216	12.00 13.03	21.00 21.00	21.00 21.00	22,302.00
TOTAL								\$1,356,964.50

GOVERNMENT'S EXHIBIT 72.

164a

GOV'T EX. #	ENTRY DATE	ENTRY No.	LETTER OF CREDIT # AND BANK	MODEL AND No. OF UNITS	FIRST INVOICE PRICE/UNIT	SECOND INVOICE PRICE/UNIT	TOTAL 2ND INVOICE VALUE
33.	NOV. 8, 1966	863429	*23956 MERCHANTS BANK OF N.Y.	US4 (CONTINENTAL) WHITE 1008	* 5.83	* 9.00	\$ 9,072.00
34.	NOV. 20, 1966	896704	*23956 MERCHANTS BANK OF N.Y.	US4 (CONTINENTAL) GOLD 516	6.75	9.00	4,644.00
35.	NOV. 27, 1966	891803	*23956 MERCHANTS BANK OF N.Y.	US4 (CONTINENTAL) GOLD 336	6.75	9.00	3,024.00
36.	DEC. 20, 1966	915078	*23956 MERCHANTS BANK OF N.Y.	US4 (CONTINENTAL) WHITE 360 US4 (CONTINENTAL) GOLD 342	5.83 6.75	9.00 9.00	6,318.00
37.	JAN. 4, 1967	925394	*23956 MERCHANTS BANK OF N.Y.	US4 (CONTINENTAL) GOLD 204 US4 (CONTINENTAL) WHITE 54	6.75 5.83	9.00 9.00	2,322.00
38.	FEB. 25, 1967	965497	*A-20509 REPUBLIC NAT. BANK	US4 (CONTINENTAL) WHITE 1998	5.83	8.00	15,984.00
39.	JAN. 31, 1967	1081594	*A-20509 REPUBLIC NAT. BANK	US4 (CONTINENTAL) WHITE 996	5.83	8.00	7,968.00
40.	JAN. 31, 1967	1057769	*A-20509 REPUBLIC NAT. BANK	US4 (CONTINENTAL) WHITE 504	5.83	8.00	4,032.00
41.	JAN. 25, 1967	965496	*A-20509 REPUBLIC NAT. BANK	US4 (CONTINENTAL) WHITE 366 US4 (CONTINENTAL) GOLD 54	5.83 6.75	8.00 8.00	3,360.00
42.	MAR. 1, 1967	1003583	*A-20509 REPUBLIC NAT. BANK	US4 (CONTINENTAL) WHITE 198 US4 (CONTINENTAL) GOLD 201	5.83 6.75	8.00 8.00	3,192.00

GOVERNMENT'S EXHIBIT 73.

16.02

GOV'T
EX. #ENTRY
DATEENTRY
No.LETTER OF
CREDIT #
AND BANK

MODEL AND No. OF UNITS

FIRST
INVOICE
PRICE/UNITSECOND
INVOICE
PRICE/UNITTOTAL
2ND INVOICE
VALUE

43.

FEB. 27, 1967

996022

*23956
MERCHANTS
BANK OF N.Y.US 4 (CONTINENTAL)
WHITE 216
US 4 (CONTINENTAL)
GOLD 495
CLASSIQUE
ANTIMONY 702

*9514.53

*12,006.00

*12,006.00

44.

FEB. 27, 1967

1008523

*A-20509
REPUBLIC
NAT. BANKUS 4 (CONTINENTAL)
WHITE 1884

5.83

8.00

15,072.00

45.

FEB. 20, 1967

1010253

*A-20509
REPUBLIC
NAT. BANKUS 4 (CONTINENTAL)
WHITE 996
US 4 (CONTINENTAL)
GOLD 162

5.83

8.00

9,264.00

46.

MAR. 12, 1967

1008529

*23956
MERCHANTS
BANK OF N.Y.US 4 (CONTINENTAL)
GOLD 1008

6.75

8.00

8,064.00

47.

MAR. 13, 1967

1008530

*23956
MERCHANTS
BANK OF N.Y.US 4 (CONTINENTAL)
WHITE 996

5.83

8.00

7,968.00

48.

MAR. 25, 1967

58326

*108944
CHASE MAN.
BANKUS 4 (CONTINENTAL)
WHITE 1704
US 4 (CONTINENTAL)
GOLD 1302

5.83

9.00

27,054.00

49.

JUNE 21, 1967

62744

*108944
CHASE MAN.
BANKUS 4 (CONTINENTAL)
WHITE 996
US 4 (CONTINENTAL)
GOLD 996

5.83

9.00

17,928.00

50.

APR. 6, 1967

58108

*108944
CHASE MAN.
BANKUS 4 (CONTINENTAL)
WHITE 2304
US 4 (CONTINENTAL)
GOLD 504

5.83

9.00

25,272.00

TOTAL

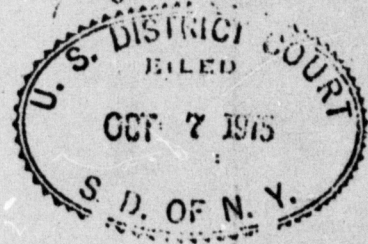
\$165,490.00

166a

GOVERNMENT'S EXHIBIT 74.

MEMORANDUM DECISION.

W. A. Muller Esq.
Rem 310 342 Madison Ave NY 10017
 UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK



----- -X
 UNITED STATES OF AMERICA, :

Plaintiff, :

- against - :

PAUL R. BROWN, :
 UNITED STATES TELEPHONE CO., :
 REPUBLIC TRANSISTOR CORP., :
 BENJAMIN JAMIL, :
 TELEPHONES UNLIMITED, and :
 ABEKO (AMERICA) CORP., :

Defendants. :
 ----- -X

MEMORANDUM DECISION

71 Civ. 3294 (HFW)

43209

60 day to file notice of appeal
Dec 7

HENRY F. WERKER, D. J.

The United States of America (the Government) brought this action under 19 U.S.C. § 1592 to recover penalties for the introduction into the commerce of the United States by Paul R. Brown (Brown) and United States Telephone Company to imported merchandise under false and fraudulent invoices.¹

The defendants were previously convicted of a violation of Title 18, United States Code with respect to 36 entries of the 122 entries allegedly fraudulently made in the Fourth Cause of Action. Summary judgment with respect to 32 of those entries was granted by this court on July 11, 1975. It was denied as to four entries because an issue of fact with respect to the statute of limitations was raised by the individual defendant, Brown. The question of the amount of the penalty with respect to those 32 entries was thereafter reserved for

MEMORANDUM DECISION

the trial with respect to the entries listed in the Summary of Value annexed hereto as Appendix A (Plaintiff's Exhibit 75).

Eighteen entries listed in Appendix A were not the subject of the criminal trial. With respect to these entries the trial was had with respect to liability as well as the amount of the penalty to be assessed.

It was stipulated that the defendant Paul R. Brown on behalf of defendant United States Telephone Company caused decorator telephones to be entered into commerce by means of invoices covered in the Government's Exhibits 1 - 50. It was further stipulated that Government's Exhibits 1A - 50A were genuine and authentic and were prepared for the account of United States Telephone Co. The court finds that Exhibits 1 - 50 and 1A - 50A are duplicates in all respects excepting for the unit price of the telephones. It further finds that 1A - 50A were never submitted to Customs but were used for purposes of obtaining letters of credit with respect to the merchandise covered by the invoices. The genuineness of the letters of credit and the debit slips on the letters showing that they were actually paid were also stipulated. These were both for the account of the defendant United States Telephone Company. The values stated in the invoices used for letter of credit purposes were in the main considerably higher than those in the invoices filed with Customs.

The special Customs invoices, Government's Exhibits 39C, 40C, 45C, were stipulated as being authentic and genuine and submitted to the banks to obtain payment on the letters of

MEMORANDUM DECISION

credit by Paul R. Brown and the United States Telephone Company. These exhibits are identical to the special Customs invoices filed with Customs, Government's Exhibits 39B, 40B and 45B, with the exception of the unit prices. The price lists of the United States Telephone Company dated April 21, 1967, August 1, 1966, March 1, 1966 and United States Telephone Company Plug-in, Ready-to-go Designer Telephones Price List 1972 and United States Telephone Company Housing Price List 1972 are also agreed as authentic and genuine.

The defendant Brown has attempted to explain the differential in price between the invoices upon which the telephones were entered and those submitted to the banks on the basis of engineering charges, tools and dies made up and discarded and other miscellaneous charges.

The statute² requires that the invoices have endorsed upon them a statement containing inter alia "that there is no other invoice differing from the invoice so produced, and that all the statements contained in such invoice and in such declaration are true and correct." Mr. Brown's testimony in the light of the fact that the second set of invoices were never disclosed becomes immaterial excepting with respect to valuation. The defendants are by their own admissions in violation of this section of the statute.

Aside from the above, the Seller in each invoice is listed as Greenhill Kato & Co., Ltd. This company acted as defendants' purchasing agent and was paid a commission for its

MEMORANDUM DECISION

services. Certainly Brown knew who the manufacturer seller was but apparently did not choose to have that revealed.

Although we are not in this proceeding concerned with value from the viewpoint of duties that may be due we must determine whether the entries were fraudulent or false without reasonable cause to believe the truth of the statement and whether the defendants are guilty of any wilful act or omission.

The defendant Brown is a seasoned businessman fully familiar with foreign commerce and the importation of goods. The only explanation which he has given for differences in value is that set forth above. No explanation is given for the failure to file these invoices nor is there any satisfactory explanation as to why the additional charges could not have been handled by an additional letter of credit. The court is thus left to the conclusion that if there were additional charges they were attributable to the actual cost of the merchandise and should have been reported on the invoices used for entering the goods. This view is further reinforced by the fact that aside from providing the wholesale price lists the defendant Brown although requested to do so furnished the Customs with no additional information or documentation with respect to the entries. As a result of this recalcitrance it became necessary in October 1965 to refer this matter for inquiry to the office of the Treasury in Japan. The report of that investigation was received in New York on

MEMORANDUM DECISION

October 24, 1966. During the period of 1964 to 1971 there were approximately 2000 import transactions per day involving Customs entries in the Port of New York and approximately 80 import specialists to handle this traffic. There was no evidence of fraud received by Customs during the period October 1965 and October 24, 1966 nor any received prior to July 21, 1966. The complaint here was filed on July 21, 1971. The statute of limitations with respect to a claim under 19 U.S.C. 1592 is "five years after the time when the alleged offense was discovered" (19 U.S.C. § 1621). The defendants have failed to sustain the defense of the statute of limitations.

Under the circumstances set forth above the court is persuaded that the plaintiff has sustained its burden of proof and has shown by a fair preponderance of the evidence that the defendants have violated sections 1482(b) and 1592 of Title 19. It is inconceivable that Mr. Brown acting on behalf of the United States Telephone Company did not know that the two sets of invoices were prepared; that one set with lower value would be used for importation and the other to obtain the letters of credit; that this was done for the purpose of lowering the value of the entries and falsely stating the unit prices of the telephones and was done wilfully and intentionally. There was furthermore no reasonable cause to believe the truth of the invoices used to enter the goods.

The evaluation of the merchandise was undertaken by Mr. Harry Haroian a Supervisory Import Specialist who has been an

MEMORANDUM DECISION

Import Specialist in electrical and electronic components including telephones since 1968. He sufficiently identified Government's Exhibits 1 - 50 and 1E - 49B the special invoices. The court finds him qualified by experience and training to value the merchandise which is the subject of this action. He evaluated the merchandise at domestic value, i.e., the price at which it was freely offered and sold in the usual quantities in the market in the United States. He based his appraisal on the wholesale price lists submitted by Paul Brown, Government's Exhibits 51 through 55, and in instances where those price lists were not available he utilized the prices in the invoices used for letter of credit purposes as representing domestic values. This appraisal was made in October 1970.

Mr. Brown's testimony as to domestic value was concerned with sales for which no documentation of any kind was furnished. His explanation as to discounts for quantity sales seemed reasonable but again there was no documentation with respect to the merchandise which was the subject of this action. He also indicated that the price lists used by Mr. Haroian were merely bargaining points not the prices at which the items were sold. For the reasons stated, i.e., lack of corroboration, this testimony is discounted. The court accepts and finds that the usual markup on the units was 1.2% to 1.5% and that a gross profit of 37 1/2% was required by defendants. Thus a telephone costing \$21 out of Japan would have to sell for \$45 in the wholesale market.

MEMORANDUM DECISION

The Government's claim based upon the valuation made by Mr. Haroian is \$1,522,454.50 (Appendix A) when applying Mr. Brown's "rule of thumb" markup of 1.2% the value is \$1,438,379.22. A markup of 1.5% would exceed the amount of the Government's claim.

Based upon these computations the court finds that the evaluation made by Mr. Haroian is a fair and reasonable appraisal of the domestic value.

The Government is granted judgment against Paul R. Brown and the United States Telephone Company in the amount of \$1,522,454.50.

Defendants' affirmative defenses are dismissed for the reasons stated in my memorandum of July 11, 1975.

SO ORDERED.

Dated: New York, New York

October 6, 1975

U. S. D. J.

MEMORANDUM DECISION

UNITED STATES OF AMERICA v. PAUL R. BROWN, et al., 71 Civ. 3294
(HFW)

NOTES

1. Title 19, United States Code, Section 1592 provides:

"If any consignor, seller, owner, importer, consignee, agent, or other person or persons enters or introduces, or attempts to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or makes any false statement in any declaration under the provisions of section 1485 of this title (relating to declaration on entry) without reasonable cause to believe the truth of such statement, or aids or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, whether or not the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement; or is guilty of any willful act or omission by means whereof the United States is or may be deprived of the lawful duties or any portion thereof accruing upon the merchandise or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, such merchandise, or the value thereof, to be recovered from such person or persons, shall be subject to forfeiture, which forfeiture shall only apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles of merchandise to which such fraud or false paper or statement relates."

2. Title 19, United States Code, Section 1482(b).

MEMORANDUM DECISION

APPENDIX ASUMMARY OF VALUE OF IMPORTED
MERCHANDISE TAKEN FROM PLAINTIFF'S
CHARTS INTRODUCED AT TRIAL

<u>Govt. Ex. #</u>	<u>Entry No.</u>	<u>Model #</u>	<u>No. of Units</u>	<u>U.S. Wholesale Price</u>	<u>Total Domestic Value</u>
1	836373	Majesty	25	\$125.00	\$11,967.50
		Napolean I	47	87.50	
		Napoleon II	6	100.00	
		Cleopatra	40	87.50	
		Mandarin	7	90.00	
2	82400	J08	99	\$ 35.50	\$12,477.00
		Cleopatra I	35	87.50	
		Cleopatra II	59	100.00	
3	82343	Majesty Gold	30	\$125.00	\$15,750.00
		Majesty Silver	89	125.00	
		Majesty Antique	7	125.00	
4	1058923	Duchess	500	\$ 37.50	\$18,750.00
5	724394	Matoi	72	\$ 79.95	\$ 5,756.40
6	4193	Ivory	460	\$ 35.50	\$68,444.00
		Black	266	35.50	
		Ivory	698	35.50	
		Ivory	504	35.50	
7	842463	Colonial	148	\$ 79.95	\$16,432.60
		Antimony	24	37.50	
		Duchess	100	37.50	
8	15601	Matoi	48	\$ 79.95	\$ 4,681.60
		Continental	22	35.50	
9	17510	Continental Ivory	550	\$ 35.50	\$38,075.00
		Continental Black	100	35.50	
		Continental Gold	200	37.50	
		Duchess	200	37.50	

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Govt. Ex. #	Entry No.	Model #	No. of Units	U.S. Whole- sale Price	Total Domestic Value
10	951642	Majestic Antique Majesty Gold	20 6	\$125.00 125.00	\$ 3,250.00
11	20323	Antimony Duchess Continental Ivory Continental Black Continental Gold	100 498 802 198 248	\$ 37.50 37.50 35.50 35.50 35.50	\$66,729.00
12	22588	Continental Ivory Continental Black Continental Gold Duchess	1348 200 402 500	\$ 35.50 35.50 37.50 37.50	\$90,554.00
13	23294	Majesty Antique Majesty Gold	67 31	\$125.00 125.00	\$12,250.00
14	23295	Continental Ivory Continental Black Continental Gold Duchess	582 80 160 700	\$ 35.50 35.50 37.50 37.50	\$37,001.00
15	25910	Continental Ivory Continental Black Continental Gold Duchess Antimony	1122 165 328 408 300	\$ 35.50 35.50 37.50 37.50 37.50	\$84,538.50
16	936732	Duchess J8-4 Gold J8-4 Ivory J8-4 Black Classique Antimony Majesty Silver Majesty Antique	250 250 500 250 100 15 15	\$ 37.50 37.50 35.50 35.50 60.00 125.00 125.00	\$52,625.00
17	959402	Matoi	42	\$ 79.95	\$3,357.90

MEMORANDUM DECISION

<u>Govt. Ex. #</u>	<u>Entry No.</u>	<u>Model #</u>	<u>No. of Units</u>	<u>U.S. Whole- sale Price</u>	<u>Total Domestic Value</u>
18	998095	Seville	702	\$ 35.50	\$41,121.00
		J08 Gold	234	37.50	
		Duchess	198	37.50	
19	1003892	J08 Ivory	300	\$ 35.50	\$10,650.00
20	66302	J08 Ivory	500	\$ 35.50	\$46,050.00
		J08 Black	100	35.50	
		Classique	100	60.00	
		J08 Gold	200	37.50	
		Duchess	200	37.50	
		Gold L'antique	100	37.50	
21	853402	Majesty Gold	20	\$125.00	\$ 5,000.00
		Majesty Antique	20	125.00	
22	856096	Majesty Gold	22	\$125.00	\$ 6,375.00
		Majesty Antique	28	125.00	
		Majesty Silver	1	125.00	
23	981376	Antimony	72	\$ 60.00	\$31,112.00
		Gold	102	37.50	
		Duchess	306	37.50	
		Seville	204	35.50	
		Majesty Gold	34	125.00	
24	1054480	Contessa	1500	\$ 24.00	\$36,000.00
25	1094282	J08 Ivory	500	\$ 35.50	\$39,450.00
		J08 Black	100	35.50	
		J08 Gold	200	37.50	
		Seville	300	35.50	
26	1108107	Duchess	150	\$ 37.50	\$20,875.00
		Classique	150	60.00	
		Majesty Antique	50	125.00	

MEMORANDUM DECISION

<u>Govt. Ex. #</u>	<u>Entry No.</u>	<u>Model #</u>	<u>No. of Units</u>	<u>U.S. Whole- sale Price</u>	<u>Total Domestic Value</u>
27	750143	Contessa Gold Majesty Gold	500 50	\$ 32.50 125.00	\$22,500.00
28	730350	Duchess Majesty Gold	300 50	\$ 37.50 125.00	\$17,500.00
29	747262	Classique	194	\$ 60.00	\$11,640.00
30	765410	Contessa White Contessa Beige Contessa Gold	3200 500 500	\$ 24.00 24.00 32.50	\$105,050.00
31	765411	Electra Gold Electra Ivory Majesty Gold	200 220 50	\$ 21.00 21.00 125.00	\$15,070.00
32	782341	Electra Ivory Electra Gold	846 216	\$ 21.00 21.00	\$22,302.00

Total 1 - 32 =
\$1,356,964.50

MEMORANDUM DECISION

<u>Govt. Ex. #</u>	<u>Entry No.</u>	<u>Model #</u>	<u>No. of Units</u>	<u>U.S. Whole- sale Price</u>	<u>Total Domestic Value</u>
33	863429	US-4 White	1008	\$ 9.00	\$9,072.00
34	896704	US-4 Gold	516	9.00	\$4,644.00
35	891803	US-4 Gold	336	\$ 9.00	\$3,024.00
36	915078	US-4 White US-4 Gold	360 342	\$ 9.00 9.00	\$6,318.00
37	925394	US-4 Gold US-4 White	204 54	\$ 9.00 9.00	\$2,322.00
38	965497	US-4 White	1998	\$ 8.00	\$15,984.00
39	1081594	US-4 White	996	\$ 8.00	\$7,968.00
40	1057769	US-4 White	504	\$ 8.00	\$4,032.00
41	965496	US-4 White US-4 Gold	366 54	\$ 8.00 8.00	\$3,360.00
42	1003583	US-4 White US-4 Gold	198 201	\$ 8.00 8.00	\$3,192.00
43	996022	US-4 White US-4 Gold Classique Antimony	201 495 702	\$12,006.00	\$12,006.00
44	1008523	US-4 White	1884	\$ 8.00	\$15,072.00
45	1010253	US-4 White US-4 Gold	996 162	\$ 8.00 8.00	\$9,264.00
46	1008529	US-4 Gold	1008	\$ 8.00	\$8,064.00

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MEMORANDUM DECISION

<u>Govt. Ex. #</u>	<u>Entry No.</u>	<u>Model #</u>	<u>No. of Units</u>	<u>U.S. Whole- sale Price</u>	<u>Total Domestic Value</u>
47	1008530	US-4 White	996	\$8.00	\$ 7,968.00
48	58326	US-4 White	1704	\$9.00	\$27,054.00
		US-4 Gold	1302	\$9.00	
49	62744	US-4 White	996	\$9.00	\$17,928.00
		US-4 Gold	996	\$9.00	
50	58108	US-4 White	7304	\$9.00	\$25,272.00
		US-4 Gold	504	\$9.00	
Total US-4 =					\$165,490.00

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JUDGMENT APPEALED FROM.

VPD:ka
71-0667

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
SDNY 10-23-75
S.D. OF NEW YORK

----- x
UNITED STATES OF AMERICA,

Plaintiff,

JUDGMENT

v.

: 71 Civ. 3294 (HFW)

PAUL R. BROWN,
UNITED STATES TELEPHONE CO.,
et al.,

: # 75, 845

:
Defendants. :
----- x

WHEREAS, trial was held in the above captioned action on August 13, 1975 before the Hon. Henry F. Werker in the United States Courthouse, Southern District of New York, and

WHEREAS, Judge Werker handed down a memorandum decision entered in this action on October 7, 1975 granting judgment to the plaintiff United States of America against defendants Paul R. Brown and United States Telephone Co. in the amount of \$1,522,454.50,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the United States of America shall have judgment against defendants Paul R. Brown and United States Telephone Co. in the amount of \$1,522,454.50 plus interest to date; and

JUDGMENT ENTERED: 10-24-75
H. Raymond F. Burghardt

CLERK

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JUDGMENT APPEALED FROM

IT IS FURTHER ORDERED that, as to the remaining defendants, Republic Transistor Corporation, Benjamin Jamil, Telephones Unlimited and Abeko (America) Corporation, the complaint is hereby dismissed with prejudice and without costs.

Dated: New York, New York

October 16, 1975

A TRUE COPY

RAYMOND F. BURCHARDT, Clerk

By

H. Harrison
Deputy Clerk

19 Henry F. Wenter
U. S. D. J.

Copy Received
Date.....
.....

COPY RECEIVED
Robert B. Fiske
UNITED STATES ATTORNEY
3-22-76